

USA v. Strauss, 7:24MJ46, 4/10/2024

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

UNITED STATES OF AMERICA, CRIMINAL CASE NO.: 7:24MJ46
APRIL 10, 2024, 4:30 P.M.
ROANOKE, VIRGINIA
Plaintiff, DETENTION/PRELIMINARY HEARING
vs.

EVAN STRAUSS, Before:
HONORABLE C. KAILANI MEMMER
UNITED STATES MAGISTRATE JUDGE
Defendant. WESTERN DISTRICT OF VIRGINIA

APPEARANCES:

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1 (Proceedings commenced, 4:30 p.m.)

2 THE COURT: All right. Madam Clerk, will you please
3 call the case.

4 THE CLERK: United States of America versus Evan
5 Strauss, 7:24MJ46.

6 THE COURT: Let the record reflect that the
7 government is present by counsel. The defendant is present, as
8 is his counsel.

9 Again, Mr. Strauss, my name is Kai Memmer. We saw
10 each other a few days ago. I am the magistrate judge here in
11 the Western District. We are here today for purposes of a
12 preliminary hearing and a detention hearing. The purpose of
13 the preliminary hearing is to determine if there is probable
14 cause to believe that you committed the offenses charged
15 against you, and the detention hearing will determine whether
16 or not you will be detained pending trial.

17 If I could, again, Mr. Strauss, as we did Monday, I'm
18 going to have you stand, sir, and be sworn in by the clerk.

19 (Defendant sworn).

20 THE COURT: You may be seated.

21 Mr. Strauss, again, can you please state your name
22 for the record?

23 THE DEFENDANT: Evan Charles Strauss.

24 THE COURT: All right. And sir, do you feel
25 clear-headed today?

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1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: And do you understand why you're here?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: All right. Very well. Again,

5 Mr. Strauss, because these charges were brought in a criminal

6 complaint, you are entitled to a preliminary hearing under

7 Federal Rule of Criminal Procedure 5.1. Again, the purpose is

8 to determine whether there is probable cause to believe that

9 you committed the offenses charged against you.

10 And Ms. Diehl, it's my understanding that you all

11 wish to go forward with the preliminary hearing at this time?

12 MS. DIEHL: Yes, Your Honor, we do.

13 THE COURT: All right. Very well. Mr. Scheff, I'll

14 hand it over.

15 MR. SCHEFF: Thank you, Your Honor.

16 I'd just like to put two things on the record. One,

17 Your Honor, is that the exhibits that we're going to be

18 introducing at today's hearing, the parties have agreed to file

19 them under seal. I'm also going to be providing Your Honor two

20 versions of some of the exhibits, one version that is

21 unredacted and one version that has redactions. Defense

22 counsel has seen everything that's going to be introduced and

23 provided to the Court today, including the unredacted versions

24 of the exhibits.

25 I'd also like to put on the record -- although this

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1 will come in a little bit of time, I just don't want to forget
2 an hour or so into this hearing -- the government made a *Jencks*
3 request with respect to the defense witnesses that are going to
4 be called today. Defense counsel produced a redacted version
5 of Jeremy Strauss's email. The government has objected to
6 being provided a redacted version of the email, and has that
7 the Court review that email to consider whether anything that
8 has been redacted actually relates to the substance of his
9 testimony once he testifies, and whether an unredacted version
10 or a less redacted version should be provided to the
11 government.

12 THE COURT: All right. Thank you for that.

13 MS. DIEHL: And Your Honor, as the government
14 mentioned or hinted at, we have no objection to filing the
15 exhibits under seal. In fact, we may have an exhibit of our
16 own that we would also like to file under seal.

17 Additionally, we did provide a redacted version just
18 because we didn't want to put the government on their left
19 foot. If, indeed, the redacted version comes in, at least they
20 have something ahead of the hearing. But we do have copies of
21 an unredacted version if the time comes and Your Honor believes
22 that an unredacted version is appropriate.

23 THE COURT: And given the agreement, I'm happy for
24 either counsel to address it, but I think we ought to address
25 it on the record, given Local Rule 9. If you could simply

Miller - Direct

1 state the basis for the agreement, why it's necessary to seal
2 the documents in this case.

3 MR. SCHEFF: Yes, Your Honor. These documents
4 contain a significant amount of personal information relating
5 to the minor victim in this case, as well as members of her
6 family. These are also documents that will ultimately be
7 subject to -- that the government will request a protective
8 order for as a part of the discovery disclosure that we'll meet
9 in this case. And for those reasons, that is why the
10 government is seeking that these documents be filed under seal.

11 MS. DIEHL: And Your Honor, regarding -- if we do
12 enter this exhibit, there is personal information about
13 Mr. Strauss's family as well. And because this all involves
14 Internet -- the term is "doxing" from all sides, we want to
15 make sure that every side is protected from the entire
16 community of the Internet that tends to use people's personal
17 information against them.

18 THE COURT: Very well. Thank you. I appreciate it.

19 MR. SCHEFF: Thank you, Your Honor.

20 With that, the government calls Special Agent Miller
21 to the stand.

22 SPECIAL AGENT MILLER, CALLED BY THE GOVERNMENT, SWORN

23 DIRECT EXAMINATION

24 BY MR. SCHEFF:

25 Q Sir, can you please state your last name for the record?

Miller - Direct

1 A Miller.

2 Q What do you do for a living?

3 A I am a special agent with the FBI currently assigned to
4 the Roanoke Resident Agency, part of the Richmond Field
5 Division.

6 Q How long have you been a special agent with the FBI?

7 A Over 20 years.

8 Q What sort of training do you have to -- did you receive to
9 become a special agent?

10 A My initial training was at the FBI Academy in Quantico,
11 Virginia. And I've had various other trainings over the last
12 20 years to include financial crimes, crimes against children,
13 and national security training.

14 Q Are you familiar with the affidavit in support of the
15 complaint in the case of Evan Strauss?

16 A Yes.

17 Q Do you adopt that affidavit as a part of your testimony
18 today?

19 A I do.

20 Q Has the defendant, Evan Strauss, been interviewed as a
21 part of this case?

22 A Multiple times.

23 Q Have Mr. Strauss's answers been consistent when he's been
24 questioned about the same thing more than once?

25 A No.

Miller - Direct

1 Q The affidavit states that Mr. Strauss ran an online group
2 called "Purgatory."

3 Are you familiar with Mr. Strauss running any other online
4 groups?

5 A Yes. He ran multiple different groups online.

6 Q What sort of activities did Purgatory and those other
7 online groups engage in?

8 A A variety of online criminal activity to include doxing of
9 information, hacking, denial of service attacks, and also
10 extortion of minor males and females to provide elicited photos
11 and images of self-harm.

12 Q When you say "elicited photos," what exactly do you mean?

13 A If they're underage females or underage males, they would
14 send these photos of themselves and their genitalia and other
15 parts that would be considered elicited.

16 Q Are you aware of Mr. Strauss specifically engaging in
17 extortion of girls to provide sexually explicit images and
18 images of self-harm?

19 A Yes.

20 Q And how did you become aware of that?

21 A Through his interviews, as well as interviews of minor
22 victim witnesses.

23 Q And what would Mr. Strauss do with those images when he
24 obtained them?

25 A He would distribute those to other members of the

Miller - Direct

1 community that he was in, and then also use them for other
2 extortion activities in the future.

3 Q The affidavit refers to a person identified as Victim 1.
4 Are you familiar with who Victim 1 is?

5 A Yes.

6 Q How old is she?

7 A 17.

8 Q What state does she live in?

9 A Wyoming.

10 Q The affidavit also states that Victim 1 was twice
11 interviewed by an FBI child and adolescent forensic
12 interviewer, and I want to ask you about some of the
13 information that Victim 1 provided in those interviews.

14 Did Victim 1 tell Mr. Strauss that she was 17 when they
15 first met?

16 A Yes.

17 Q When Mr. Strauss was interviewed, did he say whether he
18 knew how old the victim was?

19 A Yes, he did.

20 Q What did he say?

21 A He knew that she was 17 years old.

22 Q According to Victim 1, how old did Mr. Strauss tell Victim
23 1 he was?

24 A She thought he was an 18 year-old.

25 Q Is Mr. Strauss 18?

Miller - Direct

1 A No.

2 Q How old is he?

3 A 26.

4 Q The affidavit also mentions that Mr. Strauss threatened
5 members of Victim 1's family.

6 Was he able to actually find out who the members of Victim
7 1's family were?

8 A Yes, he did.

9 Q And how did he do that?

10 A Various social media searches, open source searches to
11 identify not just their names, but also ages of both of the
12 adults that she lived with, and also found out she had siblings
13 as well.

14 Q Would he share with Victim 1 that he had gathered this
15 information?

16 A Yes.

17 Q Did Mr. Strauss ever tell Victim 1 how he felt about her
18 talking to or dating other guys?

19 A Yes. He was not happy with that happening.

20 Q Are you aware of Victim 1 beginning a relationship with a
21 guy from Alabama in December of 2023?

22 A Yes.

23 Q I'll refer to him as Individual 1. And I want to ask you,
24 how did Mr. Strauss react to Victim 1 entering into a
25 relationship with Individual 1?

Miller - Direct

1 A I think he was very unhappy and possibly enraged.

2 MR. SCHEFF: Your Honor, may I approach the witness
3 and the bench to provide the packet of exhibits that I intend
4 to use?

5 THE COURT: Yes.

6 MR. SCHEFF: So we'll start with the first item in
7 that packet. And Your Honor, this is one of the exhibits that
8 I have provided a redacted and unredacted version.

9 BY MR. SCHEFF:

10 Q So what is Government's Exhibit 1?

11 A This is an image that was on Mr. Strauss's Instagram. It
12 has Victim 1's face, Victim 1's mother, and also a picture of
13 Victim 1's thighs with various scars on them from cutting.

14 MR. SCHEFF: Permission to admit Government Exhibit 1
15 into evidence.

16 THE COURT: Any objection, Ms. Diehl?

17 MS. DIEHL: No objection, Your Honor.

18 THE COURT: It will be admitted.

19 (Government Exhibit 1 marked.)

20 (Government Exhibit 1 admitted.)

21 BY MR. SCHEFF:

22 Q Special Agent Miller, was this Instagram amalgamation of
23 pictures related at all to Victim 1 entering that relationship
24 that we discussed?

25 A Yes.

Miller - Direct

1 Q How is it related?

2 A He was very unhappy with finding out about the
3 relationship and told her that she had three days to end it;
4 otherwise, he was going to commit various acts of violence to
5 her and her family.

6 Q And by "he," do you mean Evan Strauss?

7 A Evan Strauss, yes.

8 Q And so you got a redacted version and an unredacted
9 version of the document. Generally speaking, what's under
10 those black redaction marks on the redacted version of the
11 document that's going to be filed as the exhibit?

12 A Names and other personal information for Victim 1 and her
13 family.

14 Q The affidavit also mentions that Mr. Strauss demanded that
15 Victim 1 engage in certain behaviors, and that he'd scream at
16 her and threaten her if she refused.

17 Did Victim 1 ever try to block Mr. Strauss on social
18 media?

19 A Yes.

20 Q And what would happen when she did?

21 A Mr. Strauss would engage her either by creating a new
22 profile and engaging her current accounts; or if she shut an
23 account down and set up a new account, he would locate that
24 account and engage her in the new account.

25 Q The affidavit also talks about Mr. Strauss getting Victim

Miller - Direct

1 1 to cut herself.

2 Did Mr. Strauss initially deny ever getting anyone to cut
3 themselves when he was interviewed last week?

4 A Yes.

5 Q Did he deny that multiple times?

6 A Multiple times, yes.

7 Q Did he later admit that he had actually gotten Victim 1 to
8 cut herself?

9 A Yes.

10 Q The affidavit also talks about Mr. Strauss getting Victim
11 1 to send him pictures of her cutting herself.

12 What did Mr. Strauss do with those pictures?

13 A He sent those pictures to other members of the community,
14 and also sent an email to the Wyoming Department of Family
15 Services with those pictures and with the intent of reporting
16 her to Family Services.

17 MR. SCHEFF: So I'm going to go to the next document
18 in that packet. And Your Honor, this is another version where
19 I provided both a redacted and an unredacted version of the
20 exhibit.

21 BY MR. SCHEFF:

22 Q And so Special Agent Miller, what do you have there that's
23 marked as Government's Exhibit 2?

24 A This is a series of emails that were recovered from one of
25 Mr. Strauss's phones involving an exchange between him using an

Miller - Direct

1 email address, and also the other exchange was from the Wyoming
2 Department of Family Services.

3 Q And whose email address is this mainhang62@gmail.com email
4 address?

5 A Mr. Strauss's.

6 Q How do you know that?

7 A It came from his phone with other email addresses.

8 Q So he had various email accounts on his phone?

9 A Yes.

10 Q Did Mr. Strauss also admit to sending these emails to the
11 Department of Family Services?

12 A Yes.

13 MR. SCHEFF: Permission to admit Government's Exhibit
14 2 into evidence.

15 MS. DIEHL: No objection.

16 THE COURT: So admitted.

17 (Government Exhibit 2 marked.)

18 (Government Exhibit 2 admitted.)

19 BY MR. SCHEFF:

20 Q Special Agent Miller, if you go to the bottom, what is on
21 line 8 of this Cellebrite extraction?

22 A This is an email sent by Mr. Strauss on December 22nd,
23 2023 to the Department of Family Services at Wyoming reporting
24 that Victim 1 has various cuts and marks on her thighs.

25 Q And if you go to the line above that, what is that,

Miller - Direct

1 generally speaking?

2 A That is a response from the Wyoming Department of Family
3 Services asking for more information.

4 THE COURT: I'm sorry, Mr. Scheff, where are you on
5 Exhibit 2?

6 MR. SCHEFF: At the bottom of page 2, Your Honor,
7 line 7.

8 THE COURT: Thank you.

9 BY MR. SCHEFF:

10 Q And if we go up a little bit to -- well, the bottom of
11 page 1 and top of page 2, lines 3 and 4, what are we looking at
12 there?

13 A Those are attachments that were put on the email, which
14 ended up being pictures of Victim 1 and the injuries that she
15 had on her legs.

16 Q So if we go to the next document in the packet --

17 MR. SCHEFF: And Your Honor, again, one of these
18 pages, there is a redacted version and an unredacted version
19 that's been provided to the Court.

20 BY MR. SCHEFF:

21 Q So Special Agent Miller, if you look at Government's
22 Exhibit 3, what are these two pictures?

23 A These are pictures of Victim 1's thighs with various cuts
24 on them, and also the address associated with Victim 1.

25 Q Are these two of the pictures that you just mentioned were

Miller - Direct

1 sent to the Department of Family Services in Wyoming?

2 A Yes.

3 MR. SCHEFF: Permission to admit Government's Exhibit
4 3 into evidence.

5 THE COURT: Ms. Diehl?

6 MS. DIEHL: I am so sorry, Your Honor. What was
7 Exhibit 3 again?

8 MR. SCHEFF: The picture attachments to the emails.

9 MS. DIEHL: To the emails. No objection, Your Honor.

10 THE COURT: It will be admitted.

11 (Government Exhibit 3 marked.)

12 (Government Exhibit 3 admitted.)

13 BY MR. SCHEFF:

14 Q And you said that these are the victim's legs. How do you
15 know that?

16 A During the victim's interview she identified herself in
17 those photos.

18 Q What did the Department of Family Services in Wyoming do
19 after receiving this information?

20 A They alerted local law enforcement and they conducted a
21 visit at Victim 1's residence.

22 Q Let's go to the next document in that packet, Government's
23 Exhibit 4.

24 What is that document?

25 A This is a police report from the Goshen County Sheriff's

Miller - Direct

1 Office dated December 27th, 2023, documenting the visit from
2 family services and the sheriff's office.

3 Q And what was the date of that visit?

4 A December 27, 2023.

5 MR. SCHEFF: Permission to admit Government's Exhibit
6 4 into evidence.

7 MS. DIEHL: No objection, Your Honor.

8 THE COURT: It will be admitted.

9 (Government Exhibit 4 marked.)

10 (Government Exhibit 4 admitted.)

11 BY MR. SCHEFF:

12 Q Did Mr. Strauss threaten to send the pictures that he got
13 of Victim 1 cutting to anyone else besides the Department of
14 Family Services and to other members of Purgatory?

15 A Yes. He also threatened to send those to members of
16 Victim 1's family.

17 Q Did Mr. Strauss use any other method to try to intimidate
18 Victim 1?

19 A He also threatened to swat her, and also, you know, make
20 her images known throughout the community.

21 Q Did Victim 1 say whether she was aware of Mr. Strauss
22 threatening other girls?

23 A Yes, she was.

24 Q And how did she become aware of that?

25 A Friends in the community told her about Mr. Strauss's

Miller - Direct

1 reputation and things he said he had done in the past.

2 Q Just to be clear by "the community," you're referring to
3 this online community, right?

4 A That's correct.

5 Q So if we go to the next document marked as Government's
6 Exhibit 5, what is that?

7 A This is a chat that was recovered from Mr. Strauss's
8 Instagram account.

9 Q And whose Instagram account is the Hells Ruin account
10 that's noted on this chat?

11 A Mr. Strauss.

12 Q How do you know that?

13 A He admitted to it in his -- one of his interviews.

14 Q Is this other Instagram account Victim 1's account?

15 A Yes, it is.

16 MR. SCHEFF: Permission to admit Government's Exhibit
17 5 into evidence.

18 MS. DIEHL: No objection, Your Honor.

19 THE COURT: It will be admitted.

20 (Government Exhibit 5 marked.)

21 (Government Exhibit 5 admitted.)

22 BY MR. SCHEFF:

23 Q And the first message in this chat, does that message
24 reflect a request from Mr. Strauss for Victim 1 to send him a
25 picture of her vagina?

Miller - Direct

1 A Yes.

2 Q Did Victim 1 send Mr. Strauss the photo that he requested?

3 A Yes.

4 Q How do you know that?

5 A She said so in her interview, and we also recovered a
6 picture of that on one of Mr. Strauss's phones.

7 Q And does the picture that was recovered match this request
8 in terms of the message that was written on Victim 1's vagina
9 in the picture?

10 A Yes.

11 Q The affidavit discusses a video that was recorded on
12 January 2nd involving Victim 1 masturbating.

13 Does that video show Mr. Strauss's face?

14 A Yes, it does.

15 Q And where was that video taken?

16 A It looks like it was taken in his room.

17 Q Can you tell that from the background?

18 A Yes.

19 Q When Mr. Strauss was interviewed last week, did he
20 initially deny engaging in child exploitation?

21 A Yes, he did.

22 Q Did he initially deny doing anything sexual with Victim 1?

23 A Yes.

24 Q Did he later admit that he had actually engaged in
25 masturbation with Victim 1?

Miller - Direct

1 A Yes.

2 Q What was his explanation for why he had lied?

3 A He claimed that he had been extorted by other members of
4 the online community to engage in this behavior.

5 Q And who did he say had recorded the video as a part of
6 this supposed extortion plot?

7 A Another member of the community.

8 Q Can you confirm whether that's true?

9 A No.

10 That somebody else recorded it?

11 Q Right.

12 A It appeared that he recorded it himself.

13 Q And how can you tell that he recorded it himself, and that
14 he was not telling the truth when he said someone else recorded
15 it?

16 A Watching the video, it shows that he went from a chat to a
17 screen-recording application to record the activity, and then
18 it did not appear consistent with somebody else doing it. It
19 appeared that he was doing it.

20 Q Was Victim 1 ever swatted?

21 A Yes.

22 Q Let's turn to the next document in the packet,
23 Government's Exhibit 6.

24 What is that document?

25 A This is another report from the Goshen County Sheriff's

Miller - Direct

1 Office dated January 13th, 2024.

2 MR. SCHEFF: Permission to admit Government's Exhibit
3 6.

4 MS. DIEHL: And I believe this is the one we're going
5 to object to. I don't have it in front of me, but if this is
6 involving alleged swatting.

7 MR. SCHEFF: Yes.

8 MS. DIEHL: Yes. This is the one we're going to
9 object to as to irrelevant for purposes of the preliminary
10 hearing.

11 THE COURT: What's the basis?

12 MS. DIEHL: Well, Your Honor, while this was a swat
13 of someone related or in a relationship -- I'm sorry, I saw
14 this once, and I don't have it in front of me -- with -- thank
15 you.

16 Alleged swatting of I believe it was --

17 MR. SCHEFF: So we might be confused about what this
18 is. So this is the police report. I think opposing counsel
19 might be talking about a swatting call on Victim 1's boyfriend.
20 This is related to the swatting of Victim 1. So I don't know
21 if that changes opposing counsel's objection.

22 MS. DIEHL: Your Honor, we would still maintain --
23 we'd maintain our objection for both. Although this is
24 swatting of Victim 1, there is nothing tying it to Mr. Strauss,
25 especially because Victim 1 was involved in this community. It

Miller - Direct

1 could have been any number of people.

2 THE COURT: Mr. Scheff?

3 MR. SCHEFF: Your Honor, I think that's a matter of
4 weight and not admissibility. And I can also ask Special Agent
5 Miller whether he is aware of Mr. Strauss's -- Mr. Strauss
6 having any involvement in this swatting call.

7 THE COURT: All right.

8 BY MR. SCHEFF:

9 Q So Special Agent Strauss [sic], you mentioned Victim 1
10 having been swatted.

11 Are you aware whether Mr. Strauss was involved in that
12 swatting of Victim 1's house?

13 A Victim 1 stated that she was told by friends of hers that
14 Strauss had claimed that he was the one who initiated the
15 swatting.

16 MR. SCHEFF: Your Honor, I would again move to admit
17 Government's Exhibit 6.

18 MS. DIEHL: And Your Honor, we would maintain our
19 objection given that response.

20 THE COURT: Thank you. The objection is overruled.

21 (Government Exhibit 6 marked.)

22 (Government Exhibit 6 admitted.)

23 BY MR. SCHEFF:

24 Q Special Agent Miller, are you aware of Mr. Strauss
25 recently being arrested by the Franklin County Police

Miller - Direct

1 Department?

2 A Yes.

3 Q If you turn to the next document in your packet,
4 Government's Exhibit 7, what is that document?

5 A This is a police report from the Franklin County Sheriff's
6 Office dated February 12th, 2024.

7 MR. SCHEFF: Permission to admit Government's Exhibit
8 7.

9 MS. DIEHL: Your Honor, we will object to this,
10 especially given the fact that we're at the preliminary hearing
11 right now, not the detention hearing. This has nothing to do
12 with whether or not there was probable cause for what is
13 alleged in the complaint, understanding that Mr. Scheff may try
14 to admit this into the detention hearing for separate purposes,
15 but at this point in time it is inadmissible and not related to
16 probable cause.

17 THE COURT: Mr. Scheff?

18 MR. SCHEFF: Judge, I'm considering this to be both
19 the preliminary hearing and the detention hearing. And I think
20 that the Court can decide what is pertinent to the preliminary
21 hearing and what is pertinent to the detention hearing, but I
22 don't think it makes sense to have Special Agent Miller testify
23 only as the preliminary hearing and then again only as to the
24 detention hearing. I'm trying to streamline things.

25 MS. DIEHL: Understand that, Your Honor; however, my

Miller - Direct

1 understanding is Special Agent Miller was not involved in this
2 incident. And so questioning him about this regarding the
3 detention hearing and whether or not Mr. Strauss is a danger to
4 the community -- we wouldn't object to this piece of evidence
5 being admitted for the detention hearing, but having Special
6 Agent Miller talk about it, we would object to.

7 THE COURT: All right. Again, the rules of evidence
8 do not apply to the evidence. I'm going to consider it for the
9 weight, and I can separate for purposes of detention and the
10 preliminary hearing this particular document and the contents
11 of it.

12 MS. DIEHL: Yes, Your Honor.

13 THE COURT: The objection is overruled. And this
14 will be considered for detention purposes, as the government
15 has indicated.

16 Go ahead, Mr. Scheff.

17 MR. SCHEFF: Thank you, Your Honor.

18 (Government Exhibit 7 marked.)

19 (Government Exhibit 7 admitted.)

20 BY MR. SCHEFF:

21 Q Special Agent Miller, when was Mr. Strauss released from
22 custody as to this incident related to Franklin County?

23 A A couple of days after the incident, less than a week.

24 Q Did he contact anyone after he was released from custody?

25 A Yes, he did.

Miller - Direct

1 Q Who did he contact?

2 A Victim 1.

3 Q And how did he contact Victim 1?

4 A Through an anonymous communication.

5 Q And how did Victim 1 -- what made Victim 1 believe that it
6 was Mr. Strauss who was contacting her?

7 A Again, friends in the community notified her that it was
8 Strauss making the contact.

9 Q Was the timing of that contact consistent with about when
10 Mr. Strauss was released from custody?

11 A Yes.

12 Q And as far as you're aware, is that Franklin County case
13 still pending?

14 A Yes.

15 Q When Mr. Strauss was interviewed, did he admit to having
16 child pornography on his phone -- interviewed the first time, I
17 should say?

18 A I don't know if it was the first time.

19 Q At any point when he was interviewed, did he admit to
20 that?

21 A Yes, he did.

22 Q And what did he say were the ages of the girls and women
23 depicted on his phone?

24 A 14 and up.

25 Q In reviewing Mr. Strauss's phone, has law enforcement

Miller - Direct

1 found pictures of naked young women?

2 A Yes.

3 Q Is it possible to confirm whether most of those women are
4 underage?

5 A Not at this time, no.

6 Q Do they appear young enough that they could be underage,
7 but old enough that it's hard to tell whether they're just
8 older teenagers for a lot of them?

9 A Yes.

10 Q In reviewing Mr. Strauss's phone, has law enforcement
11 found pictures of young women engaging in self-harm?

12 A Yes.

13 Q Approximately how many images of young women who are naked
14 and/or engaging in self-harm were found on Mr. Strauss's phone?

15 A Approximately 20.

16 THE COURT: 20?

17 THE WITNESS: 20, yes, ma'am.

18 BY MR. SCHEFF:

19 Q When Mr. Strauss was interviewed last week, when did he
20 say was the last time he was online?

21 A Before his arrest by the Franklin County Sheriff's Office.

22 Q So before mid February?

23 A Before mid February, yes.

24 Q Did he discuss in his interview talking online with
25 someone with the user name "Gore is Lovely"?

Miller - Direct

1 A Yes.

2 Q And when did he say that he last chatted with Gore is
3 Lovely?

4 A Before his arrest by the Franklin County Sheriff's Office
5 in mid February.

6 Q Were those statements about Mr. Strauss's online activity
7 and his communications with Gore is Lovely true?

8 A No.

9 Q How do you know that?

10 A We received a report of communications between one of
11 Mr. Strauss's accounts and Gore is Lovely, and also copies of
12 those chats.

13 Q Was there also IP address information in that report?

14 A Yes.

15 Q And what did that show for the account known to be --
16 known to belong to Mr. Strauss?

17 A It showed it was coming from Franklin County, Virginia.

18 Q And that's where Mr. Strauss lives?

19 A That's correct.

20 Q Are you -- so the affidavit mentions that Mr. Strauss met
21 Victim 1 on Xbox.

22 Are you aware of Mr. Strauss meeting another girl on Xbox
23 besides Victim 1?

24 A Yes.

25 Q How old was that girl?

Miller - Direct

1 A 16.

2 Q Is it possible that she might have been younger?

3 A Yes, it is.

4 Q And where does she live?

5 A Oh, Florida.

6 Q Yes.

7 A Yes.

8 Q Did Mr. Strauss solicit that girl?

9 A Yes.

10 Q For what?

11 A Images of nudity and self-harm.

12 Q And did she send those images to him?

13 A Yes.

14 Q If you go to the next document in your packet,

15 Government's Exhibit 8, what is that document?

16 A This is a TikTok communication involving Mr. Strauss and a
17 victim in North Carolina.

18 Q I may have -- did I go out of order? Is that your last
19 exhibit or is there --

20 A This is --

21 Q Did you miss one?

22 A No.

23 Q Here.

24 A Number 9.

25 Q Okay. So what's Government's Exhibit 8?

Miller - Direct

1 A Okay. This is another report by the Franklin County
2 Sheriff's Office dated October 28th, 2022.

3 Q And what does that report relate to?

4 A This involves a female from North Carolina who was
5 recovered at Mr. Strauss's house.

6 MS. DIEHL: Objection, Your Honor.

7 Your Honor, again, related to -- first, the objection
8 related to the preliminary hearing. This doesn't have anything
9 to do with probable cause for the underlying offense. And
10 related to the detention hearing, this was a case that there
11 was no convictions, it was dismissed, and it involves
12 Mr. Strauss and his family getting someone who they thought was
13 in distress. When they learned of her age, they cooperated
14 with the FBI and ensured that she was returned home. She was a
15 runaway from a bad situation.

16 THE COURT: Again, on the -- in terms of detention, I
17 can separate what is -- what is relevant to the preliminary
18 hearing and the detention, and the Court will do that.

19 Certainly have an opportunity to cross-examine as to
20 the weight of this or the other side of it, as it were, in
21 terms of what you would like the Court to consider. But I'm
22 going to allow it.

23 MS. DIEHL: Yes, Your Honor.

24 MR. SCHEFF: Permission to admit Government's Exhibit
25 8.

Miller - Direct

1 THE COURT: Over the defendant's objection, it will
2 be admitted.

3 (Government Exhibit 8 marked.)

4 (Government Exhibit 8 admitted.)

5 BY MR. SCHEFF:

6 Q Special Agent Miller, how old was the girl in that report?

7 A 16.

8 Q And how did that girl get to Mr. Strauss's house?

9 A Mr. Strauss and his stepfather retrieved her from North
10 Carolina and drove her back to the house in Franklin County.

11 Q Was that girl subsequently returned to her home that night
12 or shortly thereafter?

13 A Yes.

14 Q Let's go to the final exhibit in your packet, Government's
15 Exhibit 9. What is that?

16 A This is a TikTok communication from the North Carolina
17 victim and Mr. Strauss.

18 Q A series of communications, right?

19 A A series of communications, yes.

20 Q And whose messages are the blue messages?

21 A That is the North Carolina victim.

22 Q And the green?

23 A That is Mr. Strauss.

24 Q And where were these messages recovered from?

25 A TikTok.

Miller - Cross

1 Q These messages, where were they -- sorry, where were they
2 recovered from?

3 A Oh, Mr. Strauss's phone.

4 MR. SCHEFF: Permission to admit Government's Exhibit
5 9.

6 MS. DIEHL: No objection, Your Honor.

7 THE COURT: They will be admitted.

8 (Government Exhibit 9 marked.)

9 (Government Exhibit 9 admitted.)

10 BY MR. SCHEFF:

11 Q Special Agent Miller, are you aware of Mr. Strauss taking
12 other girls from out of state and bringing them back to his
13 house?

14 A Yes.

15 Q And what do you know about that?

16 A In his interview he admitted to getting females from South
17 Carolina and New York and bringing them back to his house in
18 Franklin County.

19 MR. SCHEFF: I've got no further questions, Your
20 Honor.

21 CROSS-EXAMINATION

22 BY MS. DIEHL:

23 Q I think I have to say good evening, Special Agent Miller.

24 A Good evening.

25 Q So just to be abundantly clear, you were not the

Miller - Cross

1 investigating agent in this case, correct?

2 A That is correct.

3 Q So you came in for the purposes of this hearing, right?

4 A That is correct.

5 Q Okay. And so everything you know is based on review of
6 the investigation, but not based on your personal

7 investigation, correct?

8 A That's correct.

9 Q Okay. And so what you -- I want to go over some of the
10 things you reviewed in preparation for today.

11 It sounds like you reviewed the police reports, right?

12 A That's correct.

13 Q You reviewed the phone of Mr. Strauss?

14 A Parts of the extraction from Mr. Strauss's phone.

15 Q Okay. So only parts of the extraction that were given to
16 you. You didn't review the whole phone?

17 A That is correct.

18 Q Okay. And did you watch the interrogation?

19 A Yes.

20 Q Okay. Both of them?

21 A Just the one from the time of his arrest.

22 Q Okay. And so the second time he was spoken to by the
23 police, that was not recorded, or you didn't watch the
24 recording?

25 A There was an audio recording at the time of the search

Miller - Cross

1 warrant. I did not watch that. I read the summarizing report.

2 Q Okay.

3 A And then I watched the video from the time of his arrest.

4 Q Okay. Understood.

5 So I first want to talk about when we discussed Mr. Evan
6 Strauss speaking to the alleged victim, this -- save for the
7 video recording, these are all via text, right? And when I say
8 via text, I mean written communication.

9 THE COURT: I'm sorry, what was the question?

10 BY MS. DIEHL:

11 Q Yes. So when Evan Strauss is speaking to alleged Victim
12 1, this is through written communication, right?

13 A Other than the videos?

14 Q Other than the video.

15 A As far as I know, yes.

16 Q Okay. And this is through a screen name, correct, Hells
17 Ruin?

18 A I believe that was one of the screen names he used. I
19 don't know what other screen names he used.

20 Q So there were potentially multiple screen names, right?

21 A Yes.

22 Q And save for that one recording that I know we spoke
23 about, there is no way to know who is behind that screen name,
24 right?

25 A Well, there were communications on his phone that would be

Miller - Cross

1 in his possession. So yes, that would be a way to identify
2 that.

3 Q That's one way to identify, right?

4 A That's correct.

5 Q Okay. And multiple people can potentially access screen
6 names, right?

7 A As far as I know, yes.

8 Q Okay. Now, when Mr. Strauss was speaking to -- I believe
9 in the recording of the interrogation, he mentioned that
10 someone named Syskey threatened him to do some of this, right?

11 A I believe that was the name he used, yes.

12 Q Okay. And Syskey is someone part of the community, right?

13 A I believe so, yes.

14 Q Okay. Now, Syskey is also the term for malware where
15 people can steal passwords and user names, right?

16 A I don't know.

17 Q Okay. You're not aware that Syskey is a malware used to
18 steal passwords?

19 A No, I'm not.

20 Q Okay. But this was someone that Mr. Strauss was concerned
21 about, right?

22 A Yes.

23 Q And he told the FBI this?

24 A Yes.

25 Q Okay. Are you aware of a doxing website against

Miller - Cross

1 Mr. Strauss that Syskey posted online?

2 A I remember hearing something about it, but I don't know --
3 I have no details on it.

4 Q Do you remember if Mr. Strauss was the one who told people
5 about this?

6 A I don't know.

7 MS. DIEHL: Your Honor, permission to approach the
8 bench for -- to enter Defense Exhibit 1 into the record under
9 seal. And I provided a copy to the government.

10 BY MS. DIEHL:

11 Q And so you have never been on the website
12 EvanStrauss.info?

13 A No.

14 Q Okay. And so you would be unaware if this website posted,
15 for instance, exactly what was on Exhibit 1 online?

16 You don't know what's on the website?

17 A That's correct. I have no idea what's on the website.

18 Q Okay. And the alleged Victim 1 claimed that she didn't
19 want these images out publicly, correct?

20 A I believe that's the case, yes.

21 Q She had no involvement, didn't -- was forced into this,
22 correct?

23 A That's correct.

24 Q Okay. However, she was part of the community; is that
25 right?

Miller - Cross

1 A I don't know if she was part of the community, but she was
2 at least aware of the community and had some involvement in the
3 community. I don't know if she was actually a member of the
4 community.

5 Q But aware of the existence?

6 A Uh-huh.

7 Q And so just because none of us are Gen Zers, I want to
8 make sure we're clear on what all of this is.

9 The community is a group on Discord, right?

10 A I don't know if that's the platform they use or if they
11 bounce between platforms, but it's a group of people that are
12 online.

13 Q It's a group of people online.

14 And within the community there are subgroups, correct?

15 A That's my understanding, yes.

16 Q And one of the subgroups is Purgatory, right?

17 A That is my understanding.

18 Q And that is the subgroup that Mr. Strauss claims to have
19 been involved with, right?

20 A That's correct.

21 Q Okay. Now, are you aware that Mr. Strauss is autistic?

22 A No.

23 Q Are you aware that Mr. Strauss has an IQ of 75?

24 A No.

25 Q Was the FBI aware of that before they interrogated him?

Miller - Cross

1 A I don't know.

2 Q Did they ask his legal guardians for permission to
3 interrogate him?

4 A I don't know.

5 Q Are you aware that Mr. Strauss's family has been swatted?

6 A I believe I heard that through some of the discussions
7 involving this case, but I have no details on it.

8 Q And I don't know, because I was writing notes, if this
9 came out on your direct, so I apologize.

10 For the record, swat is when someone calls the police
11 about an incident, correct, and then the police come to the
12 house?

13 A Yes, but it's a fabricated incident, and the intention of
14 intimidating the victim or basically sending a message.

15 Q So like a fake bomb threat or something like that?

16 A That's a good description, yes.

17 Q Now, regarding the swatting incident against Victim 1, she
18 said that she thought it was Mr. Strauss because she heard of
19 it through friends, correct?

20 A That's correct.

21 Q She didn't know personally if it was Mr. Strauss, correct?

22 A Not to my knowledge, no.

23 Q And as far as to your knowledge, there is no evidence
24 besides what she heard through friends, linking Mr. Strauss to
25 that swat, correct?

Miller - Cross

1 A That's correct.

2 Q In fact, the person who made the call said their name was
3 Matt, right?

4 A I believe that's in the report, yes.

5 Q Similarly, after Mr. Strauss was in custody, she heard
6 through friends that he tried to contact her, right?

7 A She heard through friends that the contact that she
8 received was Mr. Strauss, yes.

9 Q Correct. So she did not know personally that the contact
10 she received was Mr. Strauss, correct?

11 A That's correct.

12 Q Okay. Are you aware that Mr. Strauss cuts himself?

13 A No.

14 Q Did he tell the FBI that he himself was threatened
15 to cut -- or was told to cut himself?

16 A I believe that was part of one of his interviews, yes.

17 Q He had to cut names into his body or else people would do
18 things to his family, correct? That was in the interview?

19 A I'm not 100 percent sure, but I do recall he was
20 threatened to perform the same acts that you just described,
21 cutting himself.

22 Q And I want to talk about this North Carolina incident.
23 There were no arrests based on that incident, correct?

24 A Not at this time, no.

25 Q Okay. In fact, the person who was 16, the family thought

Miller - Cross

1 she was older, correct, based on what they told the FBI?

2 A I don't know.

3 Q In the report they thought she was -- they said they
4 thought she was older, right?

5 A Can I look at the report?

6 Q Sure. Go ahead.

7 THE COURT: And when you say "family," you're
8 referring to the Strauss --

9 MS. DIEHL: The Strauss family, yes, Your Honor.

10 THE COURT: Exhibit 8?

11 MR. SCHEFF: Yes, Your Honor.

12 MS. DIEHL: It's difficult without having it in front
13 of me, Your Honor. I'm not trying to cast aspersions on the
14 government.

15 MR. SCHEFF: No aspersions taken.

16 THE WITNESS: It says in here that she said that her
17 husband went to get them and was under the impression that the
18 victim -- the North Carolina victim was 17, almost 18, and
19 didn't realize that she was only 16.

20 BY MS. DIEHL:

21 Q And they went down there because they thought she was
22 undergoing some sort of abuse, mental or otherwise, right?

23 A I believe that's the story they said, yes.

24 Q And as soon as the FBI came, they cooperated, right?

25 A As far as I know, yes.

Miller - Cross

1 Q And the 16 year-old was taken back to her family?

2 A That's correct.

3 Q Okay. And you did not see any text messages from Victim 1
4 stating she was 17, correct?

5 A That's correct. I have not seen those.

6 Q You have not seen any Instagram messages from Victim 1
7 stating her age, correct?

8 A I have not seen those.

9 Q You have not seen any messages from this 16 year-old girl
10 stating she was 16, correct?

11 A That's correct.

12 MS. DIEHL: May I have a moment, Your Honor?

13 THE COURT: Yes.

14 (Pause.)

15 BY MS. DIEHL:

16 Q Special Agent Miller, who were the friends Victim 1 was
17 discussing that told her this was Evan Strauss?

18 A It's my understanding it was friends in the same community
19 that Mr. Strauss is a member of.

20 MS. DIEHL: Thank you. No further questions, Your
21 Honor.

22 THE COURT: Ms. Diehl, point of clarification. Is
23 Defendant's Exhibit 1 this collective exhibit of four pages or
24 is it --

25 MS. DIEHL: It is the collective exhibit, Your Honor.

Miller - Redirect

1 And I did not enter it because Special Agent Miller didn't know
2 about it. So I can wait until my case, but this is evidence we
3 would admit as Defense Exhibit 1.

4 THE COURT: I'll hold it together until you're ready
5 and I'll try to remind you if you want to do it then, or I'll
6 admit it now, unless there's an objection by the government.

7 MR. SCHEFF: Your Honor, I was going to object to
8 authenticity because --

9 THE COURT: Then we'll hold off until you get ready.
10 We'll hold off until you get ready. I'm holding it together as
11 one -- I didn't want to mess up your pages.

12 MS. DIEHL: Yes, Your Honor. So no further questions
13 for Special Agent Miller.

14 THE COURT: All right. Thank you.

15 Mr. Scheff?

16 MR. SCHEFF: Just a couple of brief follow-ups.

17 REDIRECT EXAMINATION

18 BY MR. SCHEFF:

19 Q Special Agent Miller, with regard to the North Carolina
20 case, are you aware whether any investigation into that case is
21 ongoing?

22 A It's my understanding it's an ongoing investigation by the
23 FBI in North Carolina.

24 Q I would also point you to Government's Exhibit 2 to the
25 first email in the chain chronologically, the one on line 8,

Miller - Recross

1 the email that you identified as being an email from
2 Mr. Strauss to the Department of Family Services on December
3 22nd of 2023.

4 Does Mr. Strauss identify the victim's age in that email?

5 A Yes. He says she is 17.

6 MR. SCHEFF: Nothing further.

7 MS. DIEHL: I do have one follow-up, Your Honor --
8 two follow-ups, because I learned never to promise one.

9 THE COURT: Absolutely.

10 RECROSS-EXAMINATION

11 BY MS. DIEHL:

12 Q Special Agent Miller, if someone receives child porn
13 without asking for it --

14 A I'm sorry?

15 Q If someone receives child porn without asking for it, or
16 clicks on it, or however, if it's an accidental receiving of
17 child porn, what are they supposed to do with it?

18 A I would guess they would delete it and report it to the
19 authorities.

20 MS. DIEHL: Thank you. No further -- one moment,
21 Your Honor.

22 (Pause.)

23 BY MS. DIEHL:

24 Q And Special Agent Miller, do you know, if someone deletes
25 something off their phone or computer, if that deletes it from

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1 that hard drive?

2 A From my training, it depends on how it's deleted, what the
3 platform is. So sometimes it can be recovered. Sometimes it
4 can't.

5 Q So it could potentially still be on the computer if you
6 tried to get rid of it?

7 A That's my understanding.

8 MS. DIEHL: Thank you. No further questions.

9 THE COURT: Anything further, Mr. Scheff?

10 MR. SCHEFF: No, Your Honor. And that's all the
11 evidence we intend to present.

12 THE COURT: Thank you very much.

13 THE WITNESS: Yes, ma'am, thank you.

14 THE COURT: Mr. Scheff, argument regarding -- on the
15 preliminary hearing? Are we at that stage? I'm assuming
16 you're done with your evidence.

17 MS. DIEHL: Yes, Your Honor, I think we're at that
18 stage.

19 MR. SCHEFF: Your Honor, I'm going to be extremely
20 brief on this because we've got a lot more to come.

21 Really all I have to say is there was a video
22 recording of this 17 year-old victim found on Mr. Strauss's
23 phone. The recording reflects him using a third-party app to
24 record her masturbating, which is in direct contradiction to
25 him saying that somebody extorted him into doing this, and that

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1 they were the ones who were recording this on his behalf,
2 because the app -- the phone shows him switching between apps
3 to make the recording. And you don't even have to believe a
4 single thing that Victim 1 has had to say, as reported by
5 Special Agent Miller, because the video was found on
6 Mr. Strauss's phone and it shows that he recorded it. That
7 more than meets the probable cause standard, and frankly,
8 everything else is just gravy.

9 THE COURT: Ms. Diehl?

10 MS. DIEHL: Yes, Your Honor. While probable cause is
11 a low standard, I would not say that everything else is just
12 draping, if everything else are defenses to the case.
13 Understanding the government might think that that is
14 unimportant, it is very important when we're determining a
15 criminal case.

16 MR. SCHEFF: I said "gravy," just to be clear.

17 MS. DIEHL: Gravy, oh.

18 MR. SCHEFF: I wasn't trying to belittle anything you
19 had to say, I was just saying we don't need anything else.

20 MS. DIEHL: Understood. Understood. I heard
21 "draping." I apologize. However, gravy is the most important
22 part of a meal.

23 So regarding that, while there are things, according
24 to an agent who has never seen -- or has only looked at the
25 evidence -- we don't have the evidence before the Court.

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1 Understanding that hearsay is admissible at preliminary
2 hearings, we do not have any text messages, messages, TikTok
3 messages that show that these people told Evan Strauss how old
4 they were, nor do we have Evan Strauss -- we have his
5 connection to an email and to these -- and to these user names,
6 but we don't know who actually was using the user names.
7 Specifically, Mr. Strauss said in his interrogation that he was
8 being threatened and was under duress under someone known as --
9 I'm going to say the name wrong -- Syskey. And, in fact,
10 Syskey -- it is the defense's proffer that Syskey is recording
11 all of this and accessing people's passwords and emails and
12 information. And because duress is a defense, there is not
13 probable cause.

14 Thank you, Your Honor.

15 THE COURT: Thank you for your argument and
16 presentation.

17 Based upon the evidence presented and proffered by
18 the government, as well as the testimony of the special agent,
19 I find that there is probable cause to believe that Mr. Strauss
20 committed violations of 18 U.S.C. 2241(a) and 2252(a) --
21 (a)(5)(B) relating to the production and possession of child
22 pornography.

23 All right. Understanding much of the evidence is the
24 same, or some of that evidence may be used in the detention
25 purposes, let's go ahead and proceed on to the detention

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1 hearing. As I recall, I asked the government its basis for the
2 detention hearing on Monday and that was conceded; is that
3 correct that there is obviously an (f)(1)(E) basis for a
4 detention hearing, correct, Ms. Diehl?

5 MS. DIEHL: Yes, Your Honor, there is.

6 THE COURT: All right. And as well as a presumption?

7 MS. DIEHL: Yes, Your Honor, based on the charge,
8 there is.

9 THE COURT: All right. Very well.

10 Mr. Scheff, any additional evidence or proffers with
11 regard to -- on the detention side of the ledger?

12 MR. SCHEFF: No, Your Honor.

13 THE COURT: Very well.

14 Ms. Diehl?

15 MS. DIEHL: Yes, Your Honor. We would first like to
16 admit Defense Exhibit 1 under seal. And I understand the
17 government is going to object to authenticity. I can wait
18 until his argument is done and then I can argue.

19 THE COURT: Mr. Scheff, what's the basis of the
20 government's objection?

21 MR. SCHEFF: Your Honor, we don't know where this
22 came from. It's -- I mean, it appears to be a printout of a
23 website from today. I don't know who printed this out or who
24 accessed this website. There is really nothing to -- I
25 understand that the rules of evidence don't apply here, but we

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1 still have to have some basis for figuring out where things
2 came from. There is really no authentication of this document
3 whatsoever.

4 MS. DIEHL: Your Honor, if I may?

5 THE COURT: Yes.

6 MS. DIEHL: The first is on the bottom left corner of
7 the first page it says www.evanstrauss.info/team. I would
8 proffer that I am the one who accessed the website and printed
9 it. And anyone can go on that website as it is live right now
10 and find this website. Specifically on the left corner of the
11 top of the page it does say "accessed today" and that date.
12 Because it shows the date of the access, the time of the access
13 and the website in which it was accessed, it is authentically a
14 website. And we can argue as to relevance, but this shows that
15 it was a website accessed today and a printout of the website.

16 And if that is not enough, I can certainly pause
17 proceedings and have a witness access the website and come in
18 and testify that they have done so.

19 THE COURT: And all of these pages are from the
20 website?

21 MS. DIEHL: Yes, Your Honor. And Your Honor,
22 additionally, some of the evidence within these pages, I can
23 have his parents say that this is accurate information, but
24 that further goes to authenticity.

25 THE COURT: Offered for the purpose of what? I'm

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1 trying to get to the bottom of -- so counsel accessed a website
2 and printed these pages today?

3 MS. DIEHL: Yes, Your Honor.

4 THE COURT: That's the representation, Ms. Diehl?

5 MS. DIEHL: Yes, Your Honor, offered for several
6 purposes regarding the detention hearing and dangerousness.

7 The first is that Mr. Strauss himself -- and perhaps
8 I should have admitted this prior to the argument on the
9 preliminary hearing, but it still goes to weight of the
10 evidence and seriousness of the offense because this shows that
11 this community does this to each other, and nothing between any
12 of them is trustworthy; specifically, Mr. Strauss himself has
13 been a victim of doxing, of swatting. His address is listed.
14 The GPS picture of his home is listed. His parents' jobs,
15 emails, phone numbers are listed. And this is all public. And
16 perhaps most importantly, it shows that Syskey, who he told the
17 FBI about but they did not investigate, created this website.
18 And additionally -- and why we're asking --

19 MR. SCHEFF: Your Honor, I'd object to the fact not
20 in evidence that the FBI didn't investigate anything with
21 respect to Syskey.

22 MS. DIEHL: I believe that's what the agent stated,
23 but we --

24 THE COURT: Let me just -- what this shows is that
25 there is information on a website that you were able to access

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1 as of 10:27 today, correct?

2 MS. DIEHL: Yes, Your Honor.

3 THE COURT: Like not 10:26, but 10:27 today, not
4 yesterday, not a month ago, but 10:27 today?

5 MS. DIEHL: On a public website, yes, Your Honor.

6 THE COURT: All right.

7 MS. DIEHL: It also shows, Your Honor, whether or not
8 the FBI investigated, that Syskey -- which is the person that
9 Mr. Strauss said was terrorizing him into doing these things --
10 someone named Syskey is taking ownership of this website.

11 And additionally -- and one of the reasons we are
12 asking to file it under seal -- is the person who is Victim 1
13 has -- someone who claims to be Victim 1 has taken ownership of
14 posting on this website as well, and has posted -- we did not
15 provide this because of the sensitive nature -- but under the
16 tab Exhibit 1 that government has taken a lot of time to file
17 under seal -- has posted on this website publicly.

18 MR. SCHEFF: Your Honor, I'd again object to arguing
19 facts not in evidence that Victim 1 is the one who has posted
20 these things. I appreciate counsel's representation that
21 something was posted on this website. I don't think that
22 counsel can say, even by proffer, who posted anything that may
23 have been posted on that website.

24 MS. DIEHL: Your Honor, to be clear, I stated that
25 someone claiming to be the victim has taken ownership of this

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1 website.

2 THE COURT: What I'm troubled with is obviously from
3 an authenticity standpoint, I mean, on a website I understand
4 that counsel can go to that website and obtain this information
5 this morning, but in terms of where the information came from,
6 I mean, there is -- there is a definite forensic issue related
7 to it. I'm trying to figure out how -- what the value of this
8 is from the defendant's position, understanding that the --
9 that evidence doesn't necessarily -- we're dealing with a
10 different standard on a detention hearing.

11 MS. DIEHL: Your Honor --

12 THE COURT: Help me a little bit more, because I'm
13 not getting there. Help me a little bit more.

14 MS. DIEHL: First, respectfully, the same thing about
15 authenticity can be argued for all of government's Internet
16 evidence, understanding that the agent -- who had nothing to do
17 with this case -- has testified that in the investigation files
18 of the United States government there is something off of
19 Mr. Strauss's phone, but he testified as to Instagram, TikTok
20 messages, all of these things that have the same authenticity
21 issue. And that is the concern with the Internet.

22 However, secondarily, if the Court would like -- we
23 would need a recess -- I could call our mitigation specialist
24 who has accessed this website yesterday and I believe -- I
25 believe Monday. So it was at least out there for three days.

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1 Regarding -- again, regarding the authenticity as to
2 who posted it, we don't have that, but that is the exact
3 concern. It goes to the weight of the government's evidence
4 because they are arguing that it is -- if it came from this
5 person, then it is obviously Mr. Strauss. Well, similarly
6 here, anyone can take responsibility for these things. And
7 regardless of who posts it, what it does show to dangerousness,
8 right, is that Mr. Strauss is already being threatened. His
9 family is already being threatened by some outside source,
10 right? And so there are reasons for him to lay low, for lack
11 of a better term. And there are serious concerns for his
12 family as well. And the fact -- if the government is trying to
13 paint this case as Mr. Strauss is the puppet master behind all
14 of these doxings and these swats and sextortion, or whatever it
15 may be, this shows that the wider community has their hands in
16 all of these pots. And it is not a slam dunk case, as the
17 government would argue, that it is Mr. Strauss, because, in
18 fact, he has been a victim of these very same people, just as
19 he told the FBI he was.

20 THE COURT: Mr. Scheff?

21 MR. SCHEFF: Your Honor, I would add a couple of
22 things. It's very different pulling something off of
23 Mr. Strauss's phone, meaning he had it -- regardless of who
24 posted it in the first place, he had it in the phone that was
25 seized from him or getting something from Instagram, not pulled

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1 off of Instagram in terms of going on the Internet, but getting
2 something from corporate Instagram versus going on the Internet
3 and pulling something off. That's the first thing, Your Honor.

4 I don't doubt my colleague's representation that she
5 went on the website and that she saw it. I think that
6 addresses part of the authenticity issue. As Your Honor
7 addressed, however, we have something with regard to a website
8 from this morning, and we have something not coming from legal
9 process from the website, but just something pulled down from
10 the page, which is incredibly different, particularly when
11 we're talking about something captured at this point in time.

12 And the other thing that I would push back against on
13 the argument that the defense is making, we've never tried
14 to -- let me be clear. I'm not arguing here that Mr. Strauss
15 is the only person in this community who is doing these things.
16 There are certainly others, and I don't think that Special
17 Agent Miller said that Syskey is not being investigated. I
18 think Special Agent Miller said that he didn't believe
19 Mr. Strauss when he said that Syskey had forced him to engage
20 in this masturbation session because it was Mr. Strauss who was
21 recording it, as you can see from the phone.

22 So it frankly doesn't matter whether Mr. Strauss was
23 the only person involved in this or whether there were multiple
24 people involved in it, as long as Mr. Strauss was responsible
25 for some of these activities, which is what we are trying to

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1 prove today. Honestly, there is no honor among thieves. So
2 it's not at all surprising that Mr. Strauss, having involved
3 himself in this community, is now perhaps getting threats
4 himself. It's not at all clear why that's relevant, first of
5 all. And I also come back to the authenticity of this in terms
6 of this being pulled down from a website this morning.

7 THE COURT: Could I ask -- please stand, but can I
8 ask a few questions.

9 MS. DIEHL: Yes, Your Honor.

10 THE COURT: Perhaps I missed it. Is this -- is this
11 his website that has arguably been hacked, or are you saying
12 that this is a created, fabricated -- completely fabricated
13 website?

14 MS. DIEHL: This is a dox website, a completely
15 fabricated website.

16 THE COURT: I just wanted to make sure, because I
17 don't know that that had been clear.

18 MS. DIEHL: Yes. So dox websites are -- if I may
19 proffer --

20 THE COURT: Please.

21 MS. DIEHL: -- when you put someone's information out
22 there, you name the website either their name or their user
23 name or whatever it is, and it has information about them. And
24 it is typically used to either threaten them, extort them, or
25 just punish them.

Strauss - Direct

1 THE COURT: I'm going to allow it. It's a detention
2 hearing. I'm going to allow it, and the Court will evaluate
3 the weight of it and its importance and relevance to the issues
4 before the Court.

5 This will be admitted as Defense Exhibit 1.

6 (Defense Exhibit 1 marked.)

7 (Defense Exhibit 1 admitted.)

8 MS. DIEHL: Your Honor, at this time we call
9 Mr. Jeremy Strauss, if you would just allow a moment for
10 Mr. Franklin to grab him.

11 (Pause.)

12 I probably should have asked that before I sent him
13 out. I apologize, Your Honor.

14 THE COURT: Asked what?

15 MS. DIEHL: Permission for him to grab him.

16 JEREMY STRAUSS, CALLED BY THE DEFENSE, SWORN

17 DIRECT EXAMINATION

18 BY MS. DIEHL:

19 Q Good evening, Mr. Strauss. Thank you so much for your
20 patience.

21 I'm going to ask and start with a very obvious question.
22 How do you know Evan Strauss?

23 A He is my son.

24 Q Now, I believe an agent called you his stepfather, but
25 he's adopted. You are his father, correct?

Strauss - Direct

1 A Correct. We finalized at 23 months.

2 Q At 23 months?

3 A Uh-huh.

4 Q So you have been Evan's father since he was a baby?

5 A Yes.

6 Q Okay. Can you just tell the Court a little bit briefly
7 about why you adopted Evan and where he came from?

8 A My wife was his case manager when he went into foster care
9 at five months. He had been -- at that point, he had been
10 listed as failure to thrive. He went with a foster family who
11 was with him for about a year. And my wife and I had been
12 trying to have children of our own and had been unsuccessful,
13 and found out later on that there was physical complications as
14 to why that was.

15 At five months when she was -- he was one of her first
16 clients, and she -- she told me, she goes, We're going to adopt
17 him at some point. She goes, At least -- she says, I'm going
18 to adopt him, at least. And at 17 months his foster family
19 came to us one night after we had decided we weren't going to
20 move out of state and said to us, He's going up for adoption.
21 And we basically had to make that decision that night to pursue
22 that, and then by the next day we were already contacting the
23 appropriate channels to get that going.

24 Q And since he was adopted, have you all lived in the
25 Virginia area?

Strauss - Direct

1 A No. We started out in Wisconsin, which is where he was
2 born as well.

3 Q And when did you move to Virginia?

4 A It was the spring of 2000. He was not quite -- I think he
5 was about two years old at that point when we moved.

6 Q And has he been going to school in Virginia --

7 A Uh-huh.

8 Q -- his entire school life?

9 A In Virginia. We did live in North Carolina for a few
10 years, and he did go to school one year in Tennessee.

11 Q Okay. And does Evan have a job?

12 A No.

13 Q Is he on disability?

14 A Yes.

15 Q Why is that?

16 A He -- due to his abilities, he really doesn't have the
17 comprehension to understand certain things that he needs to do.
18 Even when he tries to do a job, focus-wise doesn't stay that
19 long before he loses that focus. He's very wanting to help and
20 work, but that long term -- to stay involved in that, he
21 doesn't really have that. He doesn't -- I don't think he has
22 that maturity yet to understand how to handle a long-term job
23 commitment.

24 Q I kind of want to go real quick just through yes or noes,
25 some of his mental health.

Strauss - Direct

1 So is he autistic?

2 A Yes.

3 Q Okay. ADHD?

4 A Yes.

5 Q Manic depressive?

6 A Yes.

7 Q Bipolar?

8 A Correct.

9 Q And the last time he got an IQ test it was 75, somewhere
10 around there?

11 A I believe it was 75, yes.

12 Q Okay. And is he currently on medication?

13 A He restarted medication recently. We were in the middle
14 of titrating it up, but we've had some issues with
15 appointments. And so we haven't been able to finish the
16 titration at this point, but he has been handling it well. And
17 that's the first medication he's been on in a while, and he's
18 doing much better. Much better.

19 Q And are you and your wife his legal guardians currently?

20 A Correct.

21 Q And so if he is required to go to doctors' appointments or
22 a psychiatrist, would you take him there?

23 A Correct.

24 Q Okay. And before -- I want to go chronologically, but
25 before we do that, do you work from home?

Strauss - Direct

1 A Yes.

2 Q As a nurse?

3 A Correct.

4 Q And your wife also works at home?

5 A Correct.

6 Q And I know there was an incident in February with Evan.

7 A Uh-huh.

8 Q And was that in -- were you involved in that incident?

9 A Yes.

10 Q Okay. It sounds like -- and correct me if I'm wrong --
11 there was an argument that escalated partially because he
12 wasn't on medication?

13 A That's correct.

14 Q Okay. Has he been better since being on medication?

15 A Absolutely. He has been considerably better.

16 Q And so this February incident you were the named victim in
17 that case?

18 A Correct.

19 Q Despite being the named victim in that case, are you
20 willing to have Evan back in the home?

21 A Absolutely.

22 Q And why is that?

23 A For one thing, the fact that he's on medications, and
24 we -- by being a nurse -- are much more aware of what to be
25 looking for if he's taking it or not taking it. And I've been

Strauss - Direct

1 able to tell over the last few weeks that he has been, in fact,
2 taking it. You can tell a definite mood change in behavior.
3 He's much more calm, docile, and much more willing to be
4 accepting and helping.

5 Q And have you talked to him about that incident --

6 A Yes.

7 Q -- and to be aware for those triggers?

8 A Uh-huh.

9 Q Would you describe him as a violent person?

10 A No.

11 Q I also want to talk about this incident with someone -- a
12 girl from North Carolina.

13 Can you kind of summarize that for the Court, what
14 happened there?

15 A He had told me that he had a friend that was having some
16 troubles with her family, and is at the point where they were
17 just not getting along anymore. And she was wanting to get out
18 of that situation. At that point I assumed that she was of
19 age, and he told me that she was 18. She told me she was 18 at
20 the time.

21 We did go down there, and he spent the evening with her
22 and with the family, and everything seemed to be fine. But she
23 decided she wanted to get out of that situation. So she came
24 back home with us.

25 Q So you weren't trying to kidnap anyone?

Strauss - Direct

1 A Absolutely not.

2 Q Okay. So why did you bring her home?

3 A She told us that she had a lot of issues going on with her
4 family. Her mom was kind of not really in the picture for
5 things and just they were always at odds. The grandma had a
6 lot of mental health issues, so there was a lot of screaming
7 and things going on there too that I think was really drawing
8 and driving her to want to get out of that situation, because
9 nobody else was addressing those needs for that family.

10 Q What did you do as soon as you found out she was not 18?

11 A I told him he needed to contact the authorities.

12 Q And when the authorities came, did you cooperate?

13 A Yes.

14 Q Well, first, did he call the authorities?

15 A I believe he did.

16 Q Okay. And what happened once they got there?

17 A When they showed up, they came in. They removed her to
18 one vehicle. They came in. They talked to him and removed him
19 to a vehicle -- they could speak. We basically sat on the
20 front porch with a few of the officers while they were in the
21 home doing their investigation. And, you know, we just -- we
22 were there just waiting for them to complete what they needed
23 to do.

24 Q Are you aware that Evan uses the Internet a lot?

25 A Yes.

Strauss - Direct

1 Q Okay. And are there computers in your home?

2 A Correct.

3 Q Okay. In fact, like we said, you and your wife work at
4 home, right?

5 A Yes.

6 Q I'm assuming with computers?

7 A Correct. Both of them have to be -- they're both
8 connected with ethernet.

9 Q So that leads me to my next question. If -- and I think I
10 called him Ethan again. I'm so sorry.

11 If Evan is released, what are you and your wife doing in
12 the home to make sure that there is no access to the Internet
13 or to computers?

14 A We are already in the process of changing the locks or the
15 handles on the doors to both her room, which serves as her
16 office, and my office downstairs so that we can have them
17 locked with a key. So it won't be the type where you can put
18 it in there and just turn it. It will actually have a keylock.

19 And then as for the Internet, we are looking at ways to
20 try to turn off the broadband part of that spectrum so that
21 only the ethernet cable directly wired from the router to our
22 computers would be accessible for Internet.

23 Q And are you and your wife willing to abide by any
24 conditions that Evan won't have any cell phones or access to
25 Xbox or something like that?

Strauss - Direct

1 A Yes.

2 Q In fact, has Evan indicated he doesn't want to be involved
3 with technology?

4 A He has quite a few times in the past as well. There's
5 been times when he'll tell me that he doesn't want to be
6 involved with some of that anymore because there's -- he was
7 scared of things. There was something going on. And so he
8 would tell us at times, I don't want to do it, but then he
9 would get drawn back into being on the Internet again. But if
10 it's possible to keep him off of it, absolutely.

11 Q Has he indicated fear for his family regarding some of the
12 Internet activities?

13 A Absolutely. Absolutely.

14 Q Does he have a driver's license?

15 A No, just an ID.

16 Q I guess this is an obvious follow-up question, but does he
17 have his own car?

18 A No.

19 Q So to get anywhere, it would have to be you or your wife?

20 A Right.

21 Q And are you willing to be a third-party custodian for
22 Evan?

23 A Yes.

24 Q Let me just make sure you understand. And I'm sure if you
25 were, the judge is certainly going to make sure you understand

Strauss - Direct

1 what that means, but there will be conditions, and you have to
2 make sure he abides by those conditions.

3 A Okay.

4 Q So would you be willing to call probation if he doesn't?

5 A Yes.

6 Q Okay. Willing to take him to court?

7 A Yes.

8 Q If he has home detention or GPS monitoring, you'd have to
9 make sure that he abides by those rules and any curfew?

10 A Yes.

11 Q And we sort of already asked the technology question.

12 There is one other person living with you; is that right?

13 A There's two, actually.

14 Q Two.

15 A Well, three if you count my wife as well.

16 Q And we may call your wife.

17 So who are the other two living with you?

18 A The other one is my mother-in-law, Judy. She's been
19 living with us for the last couple of years since my
20 father-in-law passed away.

21 Q Okay.

22 A So she has been in the house, and she helps caretake with
23 things and tries to provide the best she can for Evan and
24 everything else. She provides a very loving home. The fact
25 that we can have three generations in the same home together

Strauss - Direct

1 has been a blessing. It really has.

2 Q And so does she work?

3 A No, not anymore.

4 Q Okay. So there will be at least three adults in the home?

5 A Yes.

6 Q And the other person, is that Faith Thompson?

7 A Correct.

8 Q Who is she?

9 A She is a girlfriend of Evan's. They have known each other
10 probably about five years now. He has been there for her in a
11 lot of really dark places. She has a diagnosis of pancreatic
12 cancer within the last two years, and she's been going through,
13 fighting through that. So he's extremely concerned for her
14 well-being.

15 Q And have you spoken to her? Is she willing to abide by
16 any court conditions?

17 A Yes, I have spoken with her, and she said yes.

18 Q Okay. Are there animals in the home?

19 A Yes.

20 Q Are they friendly?

21 A Uh-huh.

22 Q Or can they be locked up if probation comes to visit?

23 A Yeah, we can put them -- we've got places where we can
24 move them to, if we needed to.

25 Q Are there any firearms in the home?

Strauss - Direct

1 A None.

2 Q Do any of you have any felonies?

3 A No.

4 MS. DIEHL: Okay. I think those are all the
5 questions I have right now. I may have some follow-ups. Thank
6 you.

7 THE COURT: Mr. Scheff?

8 MR. SCHEFF: Your Honor, at this time I would renew
9 my *Jencks* objection with regard to the statement, and would ask
10 the Court review the redactions that defense counsel has
11 proposed to see whether any of those should be disclosed to the
12 government.

13 (Pause.)

14 THE COURT: Ms. Diehl, have you had an opportunity to
15 articulate the basis under 26.2 whether this is -- that it's
16 not related to the subject matter of his testimony or is it a
17 privilege issue?

18 MS. DIEHL: It's just not related to the subject
19 matter of his testimony, Your Honor.

20 THE COURT: The Court finds that the statement --
21 unfortunately, the Court is going to need to undertake a
22 redaction that is not within the options that was provided to
23 the Court, and I'm trying to figure out how we do this.

24 MR. SCHEFF: If Your Honor just wants to put like a
25 Post-it note over that part or something, I can quickly take a

Strauss - Direct

1 look and give it back.

2 MS. DIEHL: I also can black -- I have copies, Your
3 Honor, and pens, and I can black out, which will completely
4 black out if it is scanned into the record. I'm not above old
5 school pen and ink.

6 THE COURT: I was looking at a different issue in one
7 of the -- in the information. The Court does find that this
8 email in its entirety relates to the subject matter of
9 Mr. Strauss's testimony. For that reason, the Court is going
10 to grant the government's motion and provide the government
11 with an unredacted copy of the email.

12 MS. DIEHL: Yes, Your Honor.

13 MR. SCHEFF: Thank you. And Your Honor, may I have
14 just a moment to review that?

15 THE COURT: Absolutely.

16 MR. SCHEFF: Thank you.

17 (Pause.)

18 THE COURT: Just to be clear on the record, what's
19 been provided by defense counsel in this case are two versions,
20 obviously unredacted for the Court's in-camera review of this
21 email; likewise, a redacted version with defense counsel's
22 proposal of what should be redacted as not related to the
23 subject matter of Mr. Jeremy Strauss's testimony under Federal
24 Rule of Criminal Procedure 26.2.

25 Having reviewed both the unredacted version and the

Strauss - Cross

1 redacted version, which provides the first and last paragraph
2 as conceding that it is related to the subject matter of
3 Mr. Strauss's testimony, and in considering the testimony
4 that's been provided, again, the Court believes that it should
5 be provided -- it should be produced in whole as related to his
6 testimony.

7 MR. SCHEFF: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. SCHEFF:

10 Q Good evening, sir. My name is Jason Scheff. I'm an
11 assistant United States attorney. I'm the prosecutor who is
12 handling this case. And I've got some questions for you, okay?

13 Does Evan spend a lot of time on electronic devices?

14 A Yes.

15 Q Does he get mad when he can't access the Internet?

16 A He gets frustrated with it at times.

17 Q Do you remember the FBI coming to search your house on
18 January 24th?

19 A I believe that was the day that I was out with my dogs at
20 the vet, and so I was questioned remotely. But yes, they did
21 search the house that day.

22 Q Are you aware that your wife wanted the FBI to arrest Evan
23 that day?

24 A I was aware she said at that point it was for his safety.
25 She felt that that might be the best root cause for that time.

Strauss - Cross

1 Q Are you aware that she was concerned that if he wasn't
2 arrested, he might become angry and violent?

3 A I was not aware of that.

4 Q Are you aware that your wife thought that if he wasn't
5 arrested, that Evan would think that he had outsmarted
6 everybody?

7 A That is quite possible, yes.

8 Q Are you aware that your wife thought that if he wasn't
9 arrested, that it would embolden him?

10 A I don't know if I would say embolden him. He definitely
11 has the desire to want to succeed in anything he does, but he's
12 been like that since birth. Even with his failure to survive,
13 he has done things to survive when the odds were against him.

14 Q Do you remember speaking with the FBI after -- about a
15 week or so after the search of your house?

16 A I'm trying to remember for sure if I did or not at that
17 point. I don't know what it would have been regarding to.

18 Q Do you remember speaking with the FBI about the
19 possibility of changing your WiFi password so that Evan
20 couldn't get online?

21 A Yes.

22 Q But you were afraid of how Evan would react to that,
23 right?

24 A We were concerned, yes.

25 Q Do you also remember discussing the possibility of Evan

Strauss - Cross

1 giving up the phone in exchange for the WiFi password?

2 A No.

3 Q If there had been such a proposal, do you think that
4 that's something Evan would react well to?

5 MS. DIEHL: Your Honor, objection to speculation.

6 THE COURT: He's had 25 years of experience with this
7 young man. I think the question is proper. I'll consider it
8 for what weight it's worth.

9 The question -- I'm going to overrule the objection.

10 THE WITNESS: What was the question again?

11 BY MR. SCHEFF:

12 Q Sure. Do you think that Evan would react well to being
13 asked to give up a phone in exchange for getting the WiFi
14 password?

15 A I don't know if he would react well. You know, in the
16 past -- in the past his anger was much worse at times with
17 things like that, but we have seen recently with the new
18 medications that he has been much more willing to compromise
19 and be respectful of what other people want.

20 Q When were those -- when did those -- when did he start
21 taking those new medications?

22 A They started probably early February, I believe -- late
23 January, early February. He's only been on them for about a
24 month now. He was supposed to be titrating up, but we haven't
25 been able to get back to the provider to get that next step.

Strauss - Cross

1 Q You're aware that Evan's electronic devices were seized in
2 the course of the search warrant, right?

3 A Yes.

4 Q After that, did Evan try to get any new electronic
5 devices? Are you aware of him trying to do that?

6 A Yes.

7 Q And how did you become aware of that?

8 A He told us.

9 Q And what did you say?

10 A I asked him for them.

11 Q I'm sorry, I'm not understanding.

12 A I asked him for them when he told me he had them.

13 Q So he told you that he had obtained devices, and then you
14 asked him for them?

15 A Yes.

16 Q Before he told you, were you aware that he had obtained
17 them?

18 A No.

19 Q Do you know how he obtained them?

20 A No.

21 Q Did he give them up when you asked for them?

22 A Not at first, but he did eventually give them up.

23 Q Was he angry about that?

24 A Not like he had been. I think he realized what he had
25 done was wrong and that he needed to do the right thing.

Strauss - Cross

1 Q And then when Evan was arrested by Franklin County, he had
2 more phones that were found, right?

3 A That's correct.

4 Q Were you aware of those phones before then?

5 A No.

6 Q Do you know how he got those?

7 A No.

8 Q Are you aware of Evan going online since he was arrested
9 by Franklin County?

10 A I'm not aware of that at all.

11 Q Have you seen him with any electronic devices since then?

12 A No.

13 Q Are you aware of him accessing any electronic devices
14 since then?

15 A No.

16 Q Are you aware that your wife told the FBI that she
17 considered Evan to be manipulative?

18 MS. DIEHL: Your Honor, objection to the questions
19 about being aware of what Mrs. Strauss said. I understand he
20 can say yes or no, but defense certainly has no evidence of any
21 of these statements.

22 MR. SCHEFF: I do, Your Honor, which is why I'm
23 asking it.

24 THE COURT: Any other basis, Ms. Diehl?

25 MS. DIEHL: Well, Your Honor, two things. If

Strauss - Cross

1 government is intending to use this evidence to ask for
2 Mr. Strauss to be detained, defense should have access to it,
3 even if it is evidence used against a witness as some sort of
4 impeachment.

5 And secondarily, if Mr. Strauss is aware because of
6 something Mrs. Strauss said, then that is potential marital
7 privilege as well.

8 THE COURT: I'm missing the privilege.

9 MS. DIEHL: If he is -- I don't know if the answer is
10 I was there and I heard that, but given the fact that he was
11 walking the dogs when the FBI came, I would assume that the
12 only way he could be aware is Mrs. Strauss told him; and in
13 which case if she told him that, that would be marital
14 privilege.

15 THE COURT: Marital privilege about what she told --
16 what she told the FBI; isn't that the question?

17 MR. SCHEFF: It is, Your Honor.

18 THE COURT: I'm trying to figure out how that could
19 possibly be privileged if she said something like that to the
20 FBI. I mean, unless --

21 MS. DIEHL: It is not --

22 THE COURT: I might be missing marital privilege, but
23 I'm trying to figure out why her comment to the FBI about her
24 perception of her son, how that could be marital privilege.

25 MS. DIEHL: It would be marital privilege, Your

Strauss - Cross

1 Honor, if she told Mr. Strauss: I said this to someone, which
2 would be the only way he would know.

3 THE COURT: I don't think marital privilege is that
4 broad about anything that's ever said to a spouse. I think it
5 needs to be a little more specific, but if you'd like to find
6 some authority on it, I'd be happy to consider that.

7 MS. DIEHL: Your Honor may --

8 THE COURT: Mr. Scheff -- go ahead, I'm sorry,
9 Ms. Diehl.

10 MS. DIEHL: May I have 30 seconds, Your Honor?

11 THE COURT: Absolutely. Ms. Diehl, let me get a
12 response from Mr. Scheff. It may be that he's going to provide
13 us with some information that might change part of this
14 analysis.

15 Mr. Scheff?

16 MR. SCHEFF: Your Honor, in response to the first
17 part of my colleague's objection, I'm unaware of any principle
18 of discovery at this stage that would require us to disclose
19 anything related to any evidence we're intending to present at
20 the hearing. That's just -- if counsel is aware of something,
21 she is certainly free to cite it, but I'm not aware of that.

22 As to the privilege issue, you can't privilege
23 something that you have already disclosed to a third party just
24 because you then told it to your spouse. If this is something
25 that Mr. Strauss is aware of, he can certainly testify to that.

Strauss - Cross

1 And if he's not, he can say that he's not.

2 MS. DIEHL: Yes, Your Honor. Regarding the
3 privilege, as Your Honor knows, the marital communications
4 privilege protects statements or actions that are intended as
5 confidential communication between spouses made during the
6 existence of valid marriage.

7 I don't see any indication that this is -- there is
8 any left or right limit. I'm sure there is in case law that I
9 may or may not have in front of me; however, a confidential
10 communication made by Mrs. Strauss to Mr. Strauss, "I said this
11 to the FBI," is still confidential. Now, what she said to the
12 FBI may not be confidential, but the only way Mr. Strauss would
13 know what she said is by her telling him, "I said this."

14 THE COURT: Mr. Scheff?

15 MR. SCHEFF: Your Honor, I've got two things on that.
16 One is, as counsel pointed out, it's something that is intended
17 to be confidential, whereas if it's something that was
18 disclosed to a third party, it's obviously not intended to be
19 confidential.

20 Second, I think there are two different things here.
21 One is yes, I'm aware of this information; and yes, my wife
22 told me this information. I'm happy to forgo the second as
23 to -- and Mr. Strauss certainly does not have to disclose how
24 he learned of information if it's because his wife told him.
25 He doesn't have to say, you know, "my wife told me this." That

Strauss - Cross

1 doesn't mean that he doesn't have to disclose the information,
2 because the information would not be privileged, even if "my
3 wife told me this" would be, which I still don't think it is.

4 MS. DIEHL: And Your Honor, not to move on to the
5 second objection, but to move on to the second objection
6 regarding discovery, we've already submitted a discovery
7 request to the government in this case. And understanding
8 they're awaiting a protective order, which is understandable
9 given the nature of this case, the statements made by
10 Mrs. Strauss to the FBI are not the same level of
11 confidentiality that the other discovery in this case might
12 require. We've already submitted a request for discovery. We
13 have not received this discovery. And as far as I do not have
14 case law to point out why that it would be required to be given
15 to us at a detention hearing because I did not expect this to
16 come up; however, just the basic concept of fairness and due
17 process, defense should have statements made by witnesses that
18 the government tends to elicit during impeachment and
19 cross-examination.

20 MR. SCHEFF: With respect, Your Honor, the defense's
21 discovery request do not govern the rules of discovery and
22 there is no obligation to turn over discovery prior to
23 indictment. That indictment is when the government's
24 disclosure obligations kick in, and *Jencks* is with respect to
25 witnesses that are being produced by the party. What counsel

Strauss - Cross

1 is referring to, statements of witnesses, this is not our
2 witness. We don't have a responsibility to produce this
3 witness's statement. This is defense counsel's witness.
4 Defense counsel had access to Mr. Strauss and to his wife to
5 ask them whatever they pleased, and we do not have a
6 responsibility to produce the statements of these witnesses who
7 are not our witnesses.

8 THE COURT: At this time as I recall it, the question
9 that you posed was whether or not your wife said -- go ahead
10 and give me the question again.

11 MR. SCHEFF: I'm asking whether Mr. Strauss is aware
12 that his wife told the FBI that she thought Evan was
13 manipulative.

14 THE COURT: On that question I do not find that
15 privilege attaches. I won't go into the deep depths of
16 privilege, except to say that that's a disclosure to a third
17 party. So privilege cannot attach to that particular question.
18 And I agree with the government's position with regard to this
19 being the defendant's witness.

20 So one last time, go ahead and ask the question
21 again, Mr. Scheff.

22 MR. SCHEFF: Yes, Your Honor.

23 THE COURT: Ms. Diehl, your objection is noted and
24 it's overruled.

25 BY MR. SCHEFF:

Strauss - Cross

1 Q Mr. Strauss, are you aware that your wife told the FBI
2 that she considered Evan to be manipulative?

3 A No, I do not.

4 Q Do you consider Evan to be manipulative?

5 A I would not use the word "manipulative." I would say he
6 is somebody who is wanting to do something to right a wrong.
7 He knows he's done some things that are not right, and I think
8 he's very concerned and protective of us as a family. I'm not
9 sure what it is that he's told me in the past about what to be
10 afraid of, but he has told me there are people in this world
11 that I need to be afraid of. And he has been doing the best he
12 could to try to protect us.

13 Q And you believed him when he said those things?

14 A Yes, because I believe there are bad people in this world.

15 Q Okay. Do you consider Evan to be good at lying to people
16 to get them to do what he wants?

17 A No.

18 Q Are you aware that your wife told the FBI that she
19 believes that?

20 A No, I'm not aware of that.

21 Q Now, over the past several years there have been times
22 when you've seen Evan get really, really angry, right?

23 A Yes.

24 Q And that happens frequently?

25 A No.

Strauss - Cross

1 Q How often do you think that happens?

2 A I would say over the last few years it's gotten a lot
3 less. There was a time where he was on some different
4 medications, and by the grace of God there was an issue with
5 the insurance not wanting to pay for one of the medications,
6 and they kept raising that medication -- the medication was
7 Depakote -- to help calm his increased anxiety. The half-life
8 on Depakote is 14 days. He had not received that medication in
9 21 days. His volatility went down extremely low compared to
10 that. I believe that providers, I believe that doctors don't
11 always know what they're doing when they're medicating a child,
12 especially with somebody who has mental health and special
13 needs. And I think sometimes they need to be in the home to be
14 able to see what's going on, because nobody was there to see
15 what they were doing. They just -- every time they got a
16 report that he was being agitated they gave him more
17 medication, which drove him worse. It didn't make him better.

18 Q When was that 21-day period that you're talking about when
19 he hadn't gotten his medication?

20 A It was right around when he was about 17 or 18 years old.

21 Q So that was about eight, nine years ago?

22 A Yes.

23 Q But he's had times when he's been really, really angry
24 since then, right?

25 A There's been a few times.

Strauss - Cross

1 Q So angry that he punched a hole in the wall?

2 A Yeah, he's done that.

3 Q When was the last time that happened?

4 A I haven't seen that in months, maybe a year.

5 Q And you've seen Evan get violent sometimes?

6 A In the past.

7 Q You've been a victim of that violence before?

8 A Yes.

9 Q On multiple occasions?

10 A Yes.

11 Q How many times, would you say?

12 A Two or three.

13 Q And Evan has sent you to the hospital before, hasn't he?

14 A Yes.

15 Q Evan has also been violent towards your wife?

16 A Yes.

17 Q Also on multiple occasions?

18 A Yeah.

19 Q How many times would you say he's been violent towards
20 her?

21 A I would say less, maybe twice.

22 Q Has he been violent towards Faith?

23 A No, never.

24 Q Has he been violent towards you since he was arrested by
25 Franklin County?

Strauss - Cross

1 A None.

2 Q Has he been violent towards your wife since then?

3 A No.

4 Q So let's talk about February 12th when Evan was arrested
5 by Franklin County.

6 Who called the police the first time?

7 A I did.

8 Q And that was because Evan was arguing with you because he
9 wanted to go to Rocky Mount to buy some marijuana?

10 A Yes.

11 Q And then you agreed to take Evan to do that?

12 A Yes, after -- in order to calm him down. We were
13 appeasing him at that point.

14 Q Okay. But then there was more arguing?

15 A I'm not sure what caused it, though.

16 Q Okay. But then Evan smashed the passenger side mirror of
17 your car?

18 A Yes.

19 Q And Evan threatened to paralyze you?

20 A He did say that, yes.

21 Q And is that when you called the police?

22 A Not quite then. It was a little bit after that.

23 Q Okay. And the police did come, right?

24 A Uh-huh.

25 Q That's a yes?

Strauss - Cross

1 A Yes.

2 Q But then after chatting with you for a little bit, they
3 left?

4 A The first time, yes, they left.

5 Q But then about two hours later your wife called the police
6 again, right?

7 A Yes.

8 Q And that was after Evan had hit you multiple times in the
9 head?

10 A Yes.

11 Q And your wife then tried to separate the two of you,
12 right?

13 A I actually got between -- I actually got in the middle of
14 everybody, and I was -- basically, I received the brunt of it.

15 Q Okay. And Evan put his arms around your wife's neck,
16 right?

17 A He was reaching for her, yes.

18 Q And then you and Faith stepped in to try to help?

19 A Yeah.

20 Q And Evan bit your arm?

21 A Yes.

22 Q And then when your wife tried to call 911, Evan took her
23 phone and threw it outside, right?

24 A Correct.

25 Q And was that while she was still on the phone with 911?

Strauss - Cross

1 A Yes.

2 Q So I think you said on direct examination that Evan was
3 off his meds at that point?

4 A Yes.

5 Q Why was he off his meds?

6 A He hadn't been on medication in years. They had been
7 prescribed in December when he saw this new psychiatrist, but
8 Evan has -- he's had a tough time wanting to be back on
9 medications because he's seen what they've done to him in the
10 past, and so that scares him because then he knows he has no
11 control. So he is not the one that really wants to take
12 medications based on how they have made him feel in the past
13 and how they have caused him to ramp up his own anxieties and
14 anger.

15 So we did talk about it. And after everything that
16 happened, he was willing then to try the medication, because I
17 kept talking with him and saying, Not all medications will make
18 you feel the same. I'm here with you on this. Let's go down
19 this road together and see what happens. Let's see if this
20 helps you get your focus back together and whatnot, and he did.
21 And I noticed the difference, and he's continued to take them.
22 We just weren't able to finish the titration up to the dose
23 that the doctor wanted him to be on. Due to illness and other
24 reasons, we weren't able to uphold an appointment. And so the
25 medication at that point never was titrated higher. It stayed

Strauss - Cross

1 at the dosage we were at, which he was receiving benefit from.

2 Q So when did he go back on medication?

3 A It would have been probably about a week or two I think
4 after the incident -- after he got home from being detained for
5 a week.

6 Q And before then, when do you think the last time was he
7 was taking medication?

8 A I think the last time he actually took any medication was
9 when he was -- that issue back when he was 17, 18 years old.

10 Q So it had been many years?

11 A Yeah. And we had a relatively good time through there
12 where behaviors were well. Things were good. He had -- he
13 had -- my father-in-law and him had a very good bond together.
14 They did a lot of things together. And I think over the last
15 few years with him passing away, it's really left a void in him
16 that's been hard. And somebody with his mental needs, that
17 was -- they were buddies for 20 years. They fished together.
18 They went places together. They lived together. They did all
19 these things together. And when that was removed out of his
20 life, I think he started a downward spiral, but it wasn't noted
21 very quickly. He tried to keep it together and tried to hide
22 it, and I think over time it's gotten worse.

23 He has certain times of the year that are very bad for
24 him. October is rough because that's the month he passed away.
25 Christmas is awful for him because that was the holiday that

Strauss - Cross

1 Paps did so much for him to make him feel special. And all of
2 those things are gone in his life now, and I think he struggles
3 with a lot of it.

4 I think he -- you know, we chose him at five months and we
5 told him regardless of the things he's done in the past, we
6 would have done it again in a heartbeat. There is no question
7 in my mind we would do it again and again and again. And I
8 would do whatever I could to try to do the best I can for him.

9 We're not perfect. We're human beings. My wife and I
10 tried to have children of our own. We weren't able to. He was
11 put in our life by God to give us a reason. He knew it. We
12 couldn't take care of any other child because he was going to
13 need our help. And we've done the best we can with him. We're
14 not perfect. He's not perfect. He's gotten into bad places
15 and he's seen bad things and he's been in dark places, but he's
16 not a bad person. He's just somebody who needs guidance and
17 help.

18 Mental help hospitals are not there for him. He went to
19 one a few years ago and he was raped. He's afraid to go to
20 those places. When we called for 911, he freaks out because
21 he's afraid that he's going to go back there again and he's
22 going to be assaulted again. These are things in his life that
23 nobody else knows about.

24 THE COURT: Mr. Strauss, I'm going to get us back
25 on -- I appreciate your testimony. I want you to answer the

Strauss - Cross

1 questions that Mr. Scheff --

2 THE WITNESS: I apologize, ma'am.

3 THE COURT: You don't need to apologize. I just want
4 to get us back on track.

5 All right. Mr. Scheff?

6 MR. SCHEFF: Thank you, Your Honor.

7 BY MR. SCHEFF:

8 Q Sir, in November of 2022 -- or, excuse me, in October of
9 2022, you drove Evan down to North Carolina to pick up a girl
10 and bring her back to your house, right?

11 A Correct.

12 Q And you thought she was how old initially?

13 A I thought she was 18. She told me she was 18 and he told
14 me she was 18.

15 Q She -- well, before you left the house, did you know how
16 old she was?

17 A I still thought she was 18.

18 Q Who told you that?

19 A He did.

20 Q Evan did?

21 A Uh-huh.

22 Q And you believed him?

23 A Yes.

24 Q Okay. And so you said you drove down and you spent the
25 evening with the family and that everything seemed fine, right?

Strauss - Cross

1 A Uh-huh.

2 Q That's a yes?

3 A Yes. He was with the family. I was -- I didn't know the
4 family. He had already been talking to the family. And from
5 all I knew, he was friends with them.

6 Q Okay. And so you didn't spend the evening with the
7 family, but he did?

8 A No, I did not.

9 Q And Evan told you that he was hanging out with the family
10 and everything was fine?

11 A Yes.

12 Q And so did you ask, you know, if everything was fine, why
13 do we need to pick this girl up and take her home?

14 A He said she was -- and she said the same thing -- she was
15 not happy in the situation. She tolerated her mom. She
16 tolerated her grandma, but she did not like being there
17 anymore, and she wanted to get out of that place.

18 Q And that information came from Evan?

19 A And from her.

20 Q But before you picked her up, that information came from
21 Evan?

22 A Yes.

23 Q Did you talk to her parents about any of that?

24 A No.

25 Q Why not?

Strauss - Cross

1 A I never met them.

2 Q So you --

3 A Being as she was telling me that she was 18, she was an
4 adult.

5 Q Okay. Did you -- so it seemed like you were under the
6 impression that there were some concerns about the home?

7 A Yes.

8 Q And the girl also had a younger brother who was living
9 there, right?

10 A As far as I was aware, yes.

11 Q Did you pick up the younger brother?

12 A I did not.

13 Q Why not?

14 A He did not -- from what I was told, he did not want to
15 leave.

16 Q Who told you that?

17 A He did and she did.

18 Q "He" meaning Evan?

19 A Evan.

20 Q And "she" did meaning the girl?

21 A Yes.

22 Q Did you call the police?

23 A No, I did not.

24 Q Did you call Social Services?

25 A I did not.

Strauss - Cross

1 Q Why not?

2 A Because I thought she was 18 and she had the right to
3 leave.

4 Q Well, what about her younger brother who was there?

5 A Nobody told me that there was any type of assault or
6 anything going on that his life was in danger. Just because
7 somebody says they don't want to be at home anymore doesn't
8 mean that somebody is there to hurt them.

9 Q And so when you brought the girl back to your house, you
10 knew that her parents did not know that she had gone with you,
11 right?

12 A I was not aware of that.

13 Q You were not aware of that?

14 A No.

15 Q You thought her parents knew?

16 A Yeah, I thought they knew.

17 Q Why did you think that?

18 A Because they told me they knew.

19 Q Who told you?

20 A Evan and the girl.

21 Q And you believed them?

22 A I did.

23 Q Why didn't you check with the parents?

24 A I don't know.

25 Q And then I think you said on direct examination that you

Strauss - Cross

1 told Evan to -- so there came a point where you found out that
2 she was 16?

3 A Yes.

4 Q How did you find that out?

5 A They told us. Something -- they just -- they divulged it
6 finally.

7 Q And then you told Evan to call the police?

8 A Yes.

9 Q Why didn't you call the police yourself?

10 A Because I figured it was his responsibility since he was
11 the one that wanted to go down there and get her.

12 Q And you said you thought that Evan had called the police?

13 A At first I did, yes.

14 Q What made you think that?

15 A Because he told me he did.

16 Q So you believed him?

17 A Yes.

18 Q But you later found out that was not true, right?

19 A Correct.

20 Q You found out that the girl had actually been reported
21 missing?

22 A Yes.

23 Q And was that surprising to you?

24 A Yes, it was, because I thought that, like I said, it
25 was -- that she had left on her own accord.

Strauss - Cross

1 Q Were you aware that Evan told that girl to destroy her
2 phone so she couldn't be tracked?

3 A No, I was not aware of it.

4 Q Were you aware that she did destroy her phone?

5 A I was aware she did throw her phone out the window, yes.

6 Q While you were in the car?

7 A Yes.

8 Q Did you ask her about that?

9 A I did. I asked her why she did it, and she said I don't
10 want to be followed. I don't want my parents knowing where I
11 am.

12 Q Did you ask her why?

13 A No.

14 Q Had there been other girls who Evan has wanted to come
15 stay with you?

16 A Yes.

17 Q How many?

18 A There's been two. One -- yeah, one came down from New
19 York on her own accord. She drove down.

20 Q And how old was she?

21 A She was 19 -- 18 or 19.

22 Q How do you know that?

23 A She told me.

24 Q And why was she coming down to your house?

25 A She wanted to meet him and stay with him.

Strauss - Cross

1 Q And you were okay with that?

2 A We weren't aware of it until she was already on a bus
3 coming down.

4 Q Okay. But then when she got there, you were okay with her
5 then coming to stay with you?

6 A Well, we tried to keep them apart as much as we could, and
7 tried to get an idea of who she was and what was going on
8 first. But after a while we started to realize that she had
9 other reasons to be down there, we think. We think she was
10 trying to find a home to be in because she had a bad home of
11 her own. And eventually we had talked to her brother and come
12 to find out that she had a habit of lying at times.

13 Q How long did she stay with you?

14 A I think she was with us about a month.

15 Q And why did she leave?

16 A We basically kicked her out. We sent her back to New
17 York.

18 Q And did you ever learn that her age might have been
19 different than you originally thought?

20 A No, because everything we had been told has been truthful
21 on her.

22 Q You mentioned a second girl.

23 Well, actually, let me ask you, when was the first girl
24 living with you?

25 A Honestly, I don't remember.

Strauss - Cross

1 Q Was it before the North Carolina girl?

2 A I think it was -- I think it was after, but I'm not
3 positive.

4 Q Okay. Let's talk about the second girl. When did she
5 come live with you?

6 A Honestly, I don't remember exactly that either.

7 Q Was that --

8 A There was just a blur in there where there was a couple of
9 months -- between months with girls coming in that he was
10 talking to and were coming in.

11 Q Was that before the North Carolina girl, you think, or
12 after?

13 A I think that was after.

14 Q And did she come from South Carolina?

15 A She did.

16 Q How did she come to live with you?

17 A She was living in a home with a friend of hers. She had
18 been kicked out of her place by her mom. So she was no longer
19 living with her mom. And Evan and her had been talking, and
20 wanted to see if she could come up here and start a life up
21 here and try to get her feet on the ground here, because she
22 had been trying to get herself set up down there and just
23 couldn't.

24 Q And how did she get here?

25 A I brought her.

Strauss - Cross

1 Q So you drove down and picked her up?

2 A Uh-huh.

3 Q That's a yes?

4 A Yes.

5 Q Was Evan with you?

6 A He was.

7 Q And how old did you think that girl was?

8 A 18 as well.

9 Q Who told you that?

10 A He did.

11 Q Evan told you?

12 A Yes.

13 Q You believed him?

14 A Yes.

15 Q Did you ever find out that that was untrue?

16 A Yes, we did.

17 Q And when -- how long after that did you find that out?

18 A She was with us probably just a couple of weeks. We
19 didn't find out right away. And then when we did find out, we
20 ended up getting her on a plane and shipping her up to her
21 dad's place because her mom did not want her back.

22 Q How old did you find out she was?

23 A 16.

24 Q And she had been living with you --

25 A She was just getting ready to turn 17.

Strauss - Cross

1 Q And she had been living with you for a few weeks at that
2 point?

3 A Uh-huh.

4 Q That's a yes?

5 A Yes.

6 Q Was her relationship with Evan romantic?

7 A Not so much him as her. She hung on him like a wet rag.
8 And it got to the point where he -- he would -- she would not
9 leave him alone. She was very, very controlling and very
10 manipulative of him. And it got to the point where he did not
11 want her around.

12 Q And Evan's girlfriend, Faith, currently lives with you; is
13 that right?

14 A That is correct.

15 Q And I think you said that she and Evan have known each
16 other for about five years?

17 A Yes.

18 Q And when did she start living with you?

19 A Thanksgiving night of '23.

20 Q Okay. So she's been living with you for about five-ish
21 months?

22 A About that.

23 Q And why did she start living with you?

24 A They had been friends for a while. She came down to have
25 Thanksgiving dinner with us and -- because her parents really

Strauss - Cross

1 weren't giving her a lot of support. And I can -- I hear a lot
2 of the conversations that she has on the phone with her
3 parents. Some days they're really good and other days they're
4 very volatile. But she's been living on her own for a while.
5 She had been living with her boyfriend at the time, and
6 apparently this boyfriend also had another girl living with
7 him. But we noticed the bruises on her body, that he had been
8 abusing her and threatened her. And so we told her at that
9 point, No, you're getting out of this situation. We're getting
10 you out of that home. I mean, she was definitely abused.

11 Q And she's 22 years old; is that right?

12 A Correct.

13 Q And I know that you said she and Evan have known each
14 other for about five years. Have they been in a relationship
15 since then, or, like did they start off as friends?

16 What do you know about that?

17 A They started off as friends. They had a little bit of a
18 relationship at first and then it was -- she has been different
19 with him than any other girl I've ever seen. She gets him.
20 She understands him. She knows when to give him space. He was
21 afraid to have a relationship with her because he was afraid he
22 would lose her as a friend. She is totally different than
23 anybody he's ever been with, and really probably the best girl
24 that probably he could find that could understand him. I mean,
25 she is -- she's a little goofy at times. She's a little wild

Strauss - Cross

1 child, but she's -- but she's good. She's got a great heart.
2 She helps us around the house. She helps do things for us when
3 we're gone. She works, pays rent.

4 Q Thank you, sir. Thank you. I appreciate your answer and
5 I appreciate you answering my questions, and I've got just a
6 couple -- just a few more for you.

7 Were you aware that Evan was chatting online with a girl
8 from Wyoming?

9 A No.

10 Q Were you aware that he was making an underage girl from
11 Wyoming cut herself?

12 A No, I was not aware of that.

13 Q Were you aware that he was threatening this girl?

14 A No.

15 MS. DIEHL: Your Honor, if I may, I believe that
16 Mr. Strauss is going to say no to all of the underlying
17 allegations here. His parents have purposely tried to avoid
18 knowing the underlying allegations. I understand that this is
19 a detention hearing. And if I may proffer, he will say no to
20 all of the allegations, and the government can argue whether or
21 not that makes them proper third-party custodians. But as far
22 as relevancy, if he's going to say no to all of them and we're
23 willing to proffer that, I don't think it's necessary to ask
24 all of those questions.

25 THE COURT: Mr. Scheff?

Strauss - Redirect

1 MR. SCHEFF: Your Honor, I take counsel's point. I'd
2 ask just to be able to ask one more question just to wrap up.

3 THE COURT: Sure.

4 BY MR. SCHEFF:

5 Q Sir, were you aware that your son recorded a 17 year-old
6 girl masturbating?

7 A No.

8 MR. SCHEFF: I've got nothing further.

9 THE COURT: Ms. Diehl, anything else?

10 MS. DIEHL: Very brief redirect, Your Honor.

11 REDIRECT EXAMINATION

12 BY MS. DIEHL:

13 Q Mr. Strauss, there have been times that Evan has been
14 difficult to handle; is that fair to say?

15 A Yes.

16 Q And does that stem from some of his mental handicaps?

17 A Yes.

18 Q Have you handled those mental handicaps since he was a
19 child?

20 A Since day one. I mean, he has had things going. On, he's
21 been in mental health hospitals as soon as he was in first
22 grade. He has been in and out of places that are supposed to
23 help him, and we've really found no help. We got to the point
24 where --

25 THE COURT: You've got to answer the questions, okay?

Strauss - Redirect

1 So limit your questions. You need to answer the question
2 asked. I've given a lot of leeway.

3 MS. DIEHL: Yes, Your Honor.

4 THE COURT: And I'd ask you to ask pointed questions,
5 and I'd ask you to provide answers that are responsive to the
6 questions that counsel is asking you.

7 BY MS. DIEHL:

8 Q It's true you've seen a marked improvement since this
9 round of medication, correct?

10 A Correct.

11 Q And regarding when the FBI came and took his phones, there
12 was no court order that he not receive another phone, correct?

13 A Right.

14 Q And if this time there were a court order, you would
15 ensure that he did not get another phone, correct?

16 A Correct.

17 Q Additionally, at that time after the FBI first came, he
18 was going places, out to eat and things like that with Faith;
19 is that right?

20 A Uh-huh.

21 Q Sorry, you've just got to say yes.

22 A Correct. Yes.

23 Q And if there were a court order that he had curfews or
24 wasn't allowed to go certain places, you would ensure that he
25 didn't go certain places, correct?

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1 A Correct.

2 Q Just briefly, you and your wife are both care workers; is
3 that right?

4 A Yes.

5 Q And she worked for foster care; is that right?

6 A She has worked for -- she initially worked for the county
7 where we lived at in their --

8 Q DFS?

9 A Yeah, you know, health services. She's been a special
10 needs teacher for many years, pre-K special needs. Currently
11 she works for a company called Moms in Motion, who works with
12 caregivers for people who have inabilities to take care of
13 themselves. And she is going to be able to train others to do
14 that work as well.

15 MS. DIEHL: Thank you, Mr. Strauss. No further
16 questions.

17 THE COURT: Anything further, Mr. Scheff?

18 MR. SCHEFF: No, Your Honor.

19 THE COURT: I do have some questions, Mr. Strauss.

20 Counsel for your son represented that you all do not
21 want to know the facts of the underlying -- is it the charges?
22 Did I understand that answer when we got into this discussion?

23 MS. DIEHL: Yes, Your Honor. Candidly, I have spoken
24 about this with Mrs. Strauss. She just doesn't want to know
25 the actual allegation of the complaint. She understands it has

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1 to do with the Internet. I don't know if I've specifically
2 asked that question of Mr. Strauss, but I know the family is
3 concerned about the underlying complaint allegation.

4 THE COURT: About knowing about it?

5 MS. DIEHL: About knowing the details, yes, Your
6 Honor.

7 THE COURT: Mr. Strauss, do you know the underlying
8 details of the charges against your son?

9 THE WITNESS: I do not.

10 THE COURT: Have you made any attempt to learn those
11 details?

12 THE WITNESS: They've just told me that it has to
13 deal with some Internet, and there was some other issues with
14 child porn.

15 THE COURT: But you don't want to know any more
16 details?

17 THE WITNESS: I would be okay with knowing the
18 details, but I believe in my wife's heart, she doesn't want to
19 know.

20 THE COURT: What about your mother-in-law?

21 THE WITNESS: She would not want to know either.

22 THE COURT: What about Faith?

23 THE WITNESS: Faith may want to know. I'm not sure.

24 THE COURT: Did that prompt any further questions,
25 Mr. Scheff?

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1 MR. SCHEFF: No, Your Honor.

2 THE COURT: Ms. Diehl?

3 MS. DIEHL: No, Your Honor.

4 THE COURT: Thank you very much, Mr. Strauss.

5 MS. DIEHL: Your Honor, I understand that it is very
6 late. Would there be a way -- we're not calling another
7 witness. We would rest. I would ask for a two-minute break
8 before argument to use the restroom.

9 THE COURT: Absolutely. We'll take a five-minute
10 break to use the restroom, and then we'll come back for
11 argument. Mr. Scheff, anything before we do that?

12 MR. SCHEFF: No, Your Honor. We're perfectly fine
13 with that.

14 THE COURT: You're in agreement. All right.

15 (Recess.)

16 THE COURT: Mr. Scheff, argument?

17 MR. SCHEFF: Yes, Your Honor.

18 I appreciate we've been here a long time. I'm sorry.
19 The reason for that, though, is because we have a substantial
20 amount of evidence in support of detention, and trying to make
21 sure that we have a full record before this Court. And so that
22 makes it hard to keep this brief, but I'm going to try my best.

23 So I just want to quickly note --

24 THE COURT: Let me just stop you. We are where we
25 are. You all do what you need to do. The Court is going to

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1 hear you. The Court is going to hear your argument. I've
2 heard your evidence. I've allowed the witnesses to say what
3 they need to say. I'm going to let you argue what you need to
4 argue, and I'm going to let Ms. Diehl argue what she needs to
5 argue. This man deserves our full time and attention. We can
6 do better, counsel, in the future with scheduling these things.
7 I allowed this opportunity this afternoon. And if it's going
8 to take hours and hours, it would have been helpful to let
9 Ms. Saville know earlier, and we could have figured out a way
10 to do it. But we are absolutely here. I am not cutting you
11 short, and I want both the government and Mr. Strauss to have
12 absolutely every word that you need the Court to hear on this
13 issue, all right?

14 So I apologize for my tirade, but I do not want you
15 to feel rushed. I mean, we're here. Let's get it right and
16 let's do what we need to do, all right?

17 MR. SCHEFF: Understood. I appreciate that, Your
18 Honor. We're grateful for your patience.

19 I do want to quickly note this is a presumption case.
20 I appreciate the defendant has put forth some evidence, which I
21 will get to in a second. Of course it does not mean the
22 presumption goes away. It's still a factor to be considered as
23 a part of the entire calculus here.

24 And I also want to note that, frankly, the prevailing
25 concern here is danger to the community. There is some concern

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1 about risk of flight, particularly because when Mr. Strauss has
2 been interviewed by law enforcement he has repeatedly lied over
3 and over again. He also has this large network of online
4 friends all over the country who could presumably help him if
5 he went on the run. I appreciate defense counsel mentioning
6 how he wants to lay low because he thinks that there are
7 threats against him. Laying low is also indicative of someone
8 who perhaps wants to try to get away from things and to flee.
9 Having said that, we do recognize he can't drive and that his
10 only ties are to this district. And so to be candid, danger to
11 the community is really most of the ball of wax here, and I
12 have a lot to say on that.

13 With respect to the factors to be considered in
14 evaluating whether detention is appropriate, I'll start with
15 the nature and circumstances of the offense. And as a part of
16 that, the statute provides that one of the considerations is
17 whether the case involves a minor victim, which this one does.
18 And beyond that, the nature and circumstances of this offense
19 are horrific. As the complaint and the affidavit outlines,
20 Mr. Strauss has repeatedly threatened Victim 1, this 17
21 year-old girl from Wyoming who he met online. He told her he
22 would kill her. He told her he could kill her family. He told
23 her he would kill her cat, and he threatened to swat her. And
24 it's clear that these were not just idle threats, because
25 Mr. Strauss would show the victim that he knew enough to come

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1 after her. He published that collage, Government's Exhibit 1,
2 on his Instagram account. That was a warning. He did that to
3 threaten her, to show Victim 1 that he had access to her
4 personal information and that of her family, and he was
5 demonstrating to her all the information that he had gathered
6 about her and her mom and her uncle. He was trying to make her
7 afraid and make her understand that he was capable of acting on
8 his threats.

9 And we also know that Victim 1 ultimately did get
10 swatted. And regardless of the strength of the evidence as to
11 Mr. Strauss's involvement, it is certainly mighty coincidental
12 that this girl who Mr. Strauss was going after gets swatted
13 less than two weeks after he makes this masturbation video that
14 is part of the core of this case.

15 He also threatened the victim to try to get her to do
16 the disgusting things that he wanted her to do. He made this
17 surreptitious recording of her masturbating with a hairbrush.
18 He got her to send him a picture of her vagina. He got her to
19 cut herself, including carving "reaper," his online moniker,
20 into her upper thigh. And Mr. Strauss did this out of a
21 perverse desire to satisfy his own carnal desires. He told
22 Victim 1 exactly why he wanted her to cut herself. As it says
23 in the affidavit, he told her that he, quote, got off on it.

24 And then Mr. Strauss used these photos that he had
25 Victim 1 send him as blackmail material. He admitted to

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1 getting her to cut herself. And he told law enforcement that
2 he did that to, quote, shame her, and to get her to leave him
3 alone. So he got these photos that he could use as leverage.
4 And then when he got sick of her, when he was done with her, he
5 sent those pictures of her harming herself to Social Services
6 in Wyoming to try to get her off his back because he had had
7 his fun at that point, and he was ready to dispose of her like
8 a piece of trash.

9 Not only did Mr. Strauss admit to contacting Social
10 Services, but those emails and those pictures that he sent were
11 found on his phone. Your Honor has those emails and those
12 pictures. That's Government's Exhibits 2 and 3. And Your
13 Honor can see in those emails all the personal information that
14 Mr. Strauss had been working hard to collect on Victim 1 and
15 her family that he could use against her: Her name, her age,
16 her address, her mom's name, her mom's age, her mom's phone
17 number, her mom's email address, her dad's name, her dad's
18 phone number, her dad's email address, her Facebook page, her
19 dad's Facebook page, her mom's Facebook page. And Your Honor
20 can see in those pictures that were attached to those emails
21 how Mr. Strauss had gotten Victim 1 to cut herself, including
22 carving "reaper" into her thigh.

23 Even after Mr. Strauss was arrested in Franklin
24 County, he then reached out to Victim 1 on TikTok, and he told
25 her that it was her fault that he had been arrested. He is

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1 just incapable of leaving her alone. And that --

2 MS. DIEHL: Objection. That fact never came out,
3 Your Honor. We've never heard the fact that he reached out to
4 TikTok and said it was her fault he was arrested. So we'd ask
5 that you not consider that.

6 THE COURT: Where was that?

7 MR. SCHEFF: Your Honor, I know that Special Agent
8 Miller talked about him reaching out to her on TikTok. I can't
9 remember if he -- I'm happy to strike that. I can't remember
10 if he said that part.

11 THE COURT: And I can look at those TikTok --

12 MR. SCHEFF: Well, we don't have those messages.
13 Those are separate.

14 THE COURT: Okay.

15 MR. SCHEFF: I'll stand on that Special Agent Miller
16 said that Victim 1 reported that Mr. Strauss had reached out to
17 her on TikTok after he had been released from custody.

18 MS. DIEHL: I believe the testimony was that someone
19 reached out to her after he was put in custody, and friends
20 told her that it was Evan. We have no idea what media or what
21 was said.

22 THE COURT: That's my recollection.

23 MR. SCHEFF: Yes. Your Honor, this is argument. I
24 think it's fair --

25 THE COURT: Absolutely.

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1 MR. SCHEFF: -- for me to argue that Mr. Strauss was
2 the one who reached out to her based on her hearing that
3 information, and based on the timing of reaching out as well,
4 which Special Agent Miller said corresponded with when
5 Mr. Strauss was released from prison -- or from jail, I should
6 say.

7 So that brings me to the weight of the evidence. We
8 don't have to rely just on Victim 1's statements. We have the
9 recording of Victim 1 masturbating, which shows Mr. Strauss's
10 face and it shows the background, that it was taken in his
11 room. As Special Agent Miller testified, you can see from the
12 video that he was using a third-party app to record the
13 Instagram live chat that they were having. And we have the
14 portion of the chat where Mr. Strauss was asking Victim 1 to
15 send him a picture of her vagina, which we introduced that chat
16 into evidence. And then we also have the picture that he then
17 solicited -- that he was soliciting from her that corresponds
18 to that chat. That recording and that picture were found on
19 his phone when it was seized.

20 So moving on to history and characteristics, we know
21 that Mr. Strauss has this disturbing pattern of going after
22 young girls, whether that's finding them online or actually
23 going in person and picking up some of these young girls to
24 come live with him. And I'm going to come back to that in a
25 second. But as for other troubling things we know about

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1 Mr. Strauss's history and characteristics, we know that he has
2 mental health issues. We know that there have been issues with
3 his medication. I appreciate that his dad said that he's been
4 doing much better since he's been on medication. I'll note two
5 things about that: He's been on his medication for about two
6 months at this point, which is not at all a long period of
7 time. And he has been engaging in this behavior for the last
8 few years when he wasn't on medication and apparently did not
9 have sufficient self-awareness to realize that he should have
10 gone back on medication if that was something that was
11 influencing his behavior. And I'll also note that Jeremy
12 Strauss testified that Evan went back on his medication before
13 the Franklin County assault -- before the Franklin County
14 incident, the assault against his parents.

15 Mr. Strauss also has a history of being extremely
16 volatile and violent, of exhibiting uncontrollable anger.
17 Victim 1 reported that. His parents reported that. We also
18 know that Mr. Strauss is a part of several online groups that
19 are involved in significantly violent, dangerous behavior from
20 swatting to sextortion. And law enforcement has heard from
21 multiple individuals that Mr. Strauss was engaged in that
22 behavior, including extorting young girls for nude pictures and
23 pictures of self-harm that he circulated in the group. And
24 also, there were approximately 20 images found on his phone of
25 young women who were naked and/or engaging in self-harm. And

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1 because it is difficult to identify most of these girls, and
2 because they're of the age where they could be 16, they could
3 be 17, they could be 18, they could be 19, it's hard to say
4 whether these girls are underage or not.

5 We also know that Mr. Strauss is incapable of telling
6 the truth. He denied in engaging in child exploitation in
7 general or with Victim 1. And even setting aside the
8 statements of the multiple victims that Mr. Strauss has
9 exploited, again, we know that he exploited Victim 1 because of
10 the evidence that was recovered from his phone. And we also
11 know that Mr. Strauss lied about someone else recording the
12 video of Victim 1 masturbating, because you can see in the
13 video that he's the one who recorded it. And we know that
14 Mr. Strauss lied about being online since his arrest by
15 Franklin County because the FBI received Instagram chats
16 showing that he was online. And we also know that Jeremy
17 Strauss, his father, was not aware of that. He is unaware of
18 Mr. Strauss being online or having access to electronic devices
19 since his arrest from Franklin County, which we know to be
20 untrue.

21 Lastly, we have the nature and seriousness of the
22 danger that Mr. Strauss poses; and frankly, that danger cannot
23 be overstated. He is a danger to the people in his house. He
24 is a danger to any young girl who uses the Internet and finds
25 her way into these online communities. He is a danger to

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1 anyone who he might want to target in a swatting attempt. We
2 have the minor victim in this case who Mr. Strauss threatened
3 to get her to cut herself, to get her to send him nude
4 pictures, and to engage in sexual activity with him. We have
5 another minor victim, the girl from Florida, who Mr. Strauss
6 also got to cut herself and to send him nude photos of very
7 similar behavior that he exhibited with Victim 1. We have
8 Mr. Strauss's girlfriend, Faith, who he has apparently been in
9 a relationship with since she was underage. And we have --
10 according to the pretrial services report, he said that they
11 have been together for six years and she is 22. Then we have
12 the other girls who Mr. Strauss took from out of state and
13 brought them to come live with him, including the 16 year-old
14 girl who Mr. Strauss and his father picked up from North
15 Carolina.

16 And let me talk about that girl. Mr. Strauss and his
17 father go to pick her up from North Carolina seemingly because
18 Mr. Strauss tells his parents that she's in a bad home
19 environment. They don't call the police. They don't call
20 Social Services. They supposedly have this concern about their
21 safety because they're believing whatever their son says. And
22 he says she's 18 and they believe that. But they also don't
23 remove her younger brother from the home, who they know this
24 child is in the home, and they know -- they seem to believe
25 it's a bad home environment. And then they bring her across

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1 state lines to their home in Virginia. And even when they
2 learn she's 16, they still don't alert anyone. Mr. Strauss
3 tells his son to call the police. He trusts his son when his
4 son says that he called the police, which we know is untrue.
5 And his parents instead do nothing of their own accord. Then
6 there's a missing person report, thankfully, and law
7 enforcement show up and take this girl home around November 1st
8 of 2022.

9 And then Your Honor can see from the TikTok messages
10 in Exhibit 9 that one month later, two months later,
11 Mr. Strauss is still talking to this underage girl. That in
12 and of itself is concerning, but the content of those chats
13 makes matters even worse. On the first page of those messages
14 this girl tells Mr. Strauss that she went to a mental hospital,
15 how she has bipolar disorder, borderline personality disorder,
16 major depressive disorder, and anxiety disorder. He continues
17 to talk to her. On the next page Mr. Strauss is telling her he
18 loves her, that he's waiting for her until 2024, which I'll
19 note is when this 16 year-old child would be set to turn 18.
20 And in response to that, this child responds that she knows
21 Mr. Strauss is 24, and that he has, quote, done it with 13 and
22 14 year-olds.

23 On page 5 of the exhibit, which is page 20 of the
24 Cellebrite report, Mr. Strauss again says he loves this young
25 girl. She asks, What about if you go to prison because of the

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1 other girls? He doesn't disabuse her of the notion that that
2 might be a possibility. On page 6, which is page 22 of that
3 report, this girl asks Mr. Strauss what he lied to her about.
4 And on the next page he admits to her that he lied about his
5 age. He lied about his birthday. On the next few pages the
6 girl continues to talk about her severe mental issues, and
7 Mr. Strauss continues to talk to her and to groom her. On page
8 11, which is page 80 of the Cellebrite report, Mr. Strauss
9 calls this 16 year-old girl the love of his life, his fiancée.

10 In short, we have this demonstrated pattern of
11 Mr. Strauss going after young girls, a 17 year-old, multiple 16
12 year-olds. And his parents have not only tolerated it, they
13 have assisted him in doing so.

14 And that brings me to the last thing that I want to
15 address, and that's the evidence in the release plan that the
16 defense has put forward, all of which ties into the danger that
17 Mr. Strauss poses. The defense would have Mr. Strauss released
18 right back into the same home where he perpetrated all of this
19 conduct, seemingly under the noses of both his parents, his
20 grandmother, and his girlfriend. And his parents in particular
21 don't even want to acknowledge what has happened here. They
22 don't even want to learn about the fact of the conduct and
23 understand what their son has been charged with. It's shocking
24 that with four other people in this house, he has still been
25 able to engage in any of the behavior we have discussed at the

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1 hearing today, much less all of it. The level of ignorance and
2 willful blindness by the other people in that home is
3 astounding.

4 The defense also would have Mr. Strauss released back
5 into the custody of the same parents who he has repeatedly
6 beaten in the past, including most recently in February when he
7 smashed the side mirror of his parents' car. He repeatedly hit
8 his father in the head. He put his arms around his mother's
9 neck and lunged -- or, rather, he lunged for his mother. He
10 bit his father's arm and he grabbed his mom's phone when she
11 was trying to call 911 to try to prevent her from reporting
12 this.

13 I appreciate that Mr. Strauss's parents love him, and
14 I understand that they do not want him to be in jail, and I
15 respect their love and their devotion to their child. And that
16 is why they are in denial, because that love is blinding them.
17 It is truly jarring to have Mr. Strauss -- Mr. Jeremy Strauss
18 stand up there and say that he does not consider his son to be
19 violent when he has been violent towards them. He is a danger
20 to them, not to mention other people.

21 They have also been unaware of him continuing to
22 obtain electronic devices seemingly unless he volunteers that
23 information or until law enforcement comes and seizes them.
24 And Mr. Strauss testified that not only was he not aware of
25 them, he didn't know how his son had gotten these devices. It

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1 also seems from Mr. Strauss's testimony that he will believe
2 just about anything his son tells him. He has -- he doesn't
3 appear to ever challenge anything that his son has to say to
4 him. He has the utmost faith in him and belief that he's being
5 honest with them and trying to protect them.

6 Mr. Strauss's parents have shown tremendously poor
7 judgment in abiding his bad behavior, no doubt blinded by their
8 love for their son. But there have been young girls going in
9 and out of this house, which Mr. Strauss was only able to
10 accomplish with the help of his parents. His father drove him
11 down to North Carolina to pick up the 16 year-old girl. His
12 father drove him down to South Carolina to pick up the other 16
13 year-old girl. And then neither of his parents have the good
14 sense to alert the police, or Social Services, or even give the
15 child's parents a heads up that these kids were there.

16 It seems that if you ask the defendant's parents,
17 they would tell you that their son is a benevolent person
18 seemingly creating a safe haven for girls from broken homes.
19 But that's not what we have here. Evan is a 26 year-old
20 mentally disturbed, sadistic, violent man. He's not running a
21 home for wayward children. He's engaging in human trafficking.
22 And while I want to give his parents the benefit of the doubt
23 and assume that they have merely been ignorant of what their
24 son has been up to, they are unwittingly -- they have been
25 unwittingly helping their son abduct young girls from other

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1 states. And they've been doing so by relying on nothing more
2 than their son's say-so in helping him do whatever he wants
3 while declining to question him or anybody else to get more
4 information or to alert people whose job it actually is to help
5 girls in need. It's hard to have confidence in the idea that
6 his parents are suitable third-party custodians when under
7 their watch they have allowed Mr. Strauss to put multiple minor
8 girls in immense danger.

9 The short of it, Your Honor, is that there is clear
10 and convincing evidence that Mr. Strauss poses a danger to the
11 community, to his parents, to young girls, and really anyone
12 with an address that could be used as a swatting target, and
13 we'd ask that he be detained pending trial.

14 THE COURT: Thank you.

15 MS. DIEHL: Your Honor, respectfully to the Court and
16 to my colleague, we don't lock people up in jail because they
17 have mental health issues. And we don't make decisions based
18 on emotion here in this courtroom. We make decisions based on
19 the law. And if someone has a mental health condition, we
20 ensure that they get the treatment that they need. A mental
21 health condition in and of itself is not a reason to put
22 someone behind bars. And the majority of my colleague's
23 argument was that Mr. Strauss is a danger because he has a
24 mental health condition.

25 Mr. Strauss has had violent episodes in the past with

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1 his family. His family, who called the police and were willing
2 to report him to the police when that got out of hand. And the
3 evidence shows that happened in February. That's when it got
4 out of hand, that they called the police. They are willing to
5 report him when he does something wrong. But the fact that he
6 decompensated in February when all this was going on does not
7 in and of itself make him a danger or unable to live in the
8 community under the eyes of his parents. You heard testimony
9 that he is on medication that has been working, that with this
10 medication he is understanding the rules. He is behaving with
11 his family. He is following the rules and he is listening.

12 The government makes the argument that he hasn't been
13 on this medicine long; it's been two months. But that's all it
14 takes if the medicine works. If it works after two months,
15 that prevents someone from decompensating. Mr. Scheff also
16 argued that Mr. Strauss does not have the sufficient
17 self-awareness to understand that he needed the medication.
18 Mr. Strauss is a 26 year-old man with severe autism, bipolar
19 disorder, and manic depressive. It makes sense that he didn't
20 have sufficient self-awareness, and he's not required to have
21 successful self-awareness. That's why he went on medication.
22 That's why we are offering his parents as third-party
23 custodians.

24 The majority of the government's argument was based
25 on the weight of the evidence and the seriousness of the

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1 offense. And I can't get up here with a straight face and say
2 that if all of this is true, that it is not a serious offense.
3 Of course it is. Now, of course, we haven't had the benefit --
4 and I understand the way detention hearings work -- we haven't
5 had the benefit of cross-examining or looking at the evidence,
6 or being able to bring in our own expert witness to testify as
7 to how a third party could get into a phone, or why the fact
8 that Mr. Strauss being swatted and Mr. Strauss being doxed and
9 Mr. Strauss being sextorted matters, why that might matter for
10 him giving his password or his email to someone, or the ability
11 for someone to hack into his phone.

12 The weight of the evidence based on just today in the
13 detention hearing is strong, and it is a very serious crime.
14 But that is not the only things we look at, Your Honor. This
15 is a presumption case, and so we must start there. And as I
16 stated in our written motion, Your Honor, the presumption is
17 very easy to rebut. It is some evidence. Mr. Strauss has
18 lived in this community for almost his entire life with I think
19 his dad said something briefly in Tennessee, and they moved
20 from Wisconsin. He takes medication. That is clearly
21 important. He must take it or he decompensates. And that is
22 from providers here in Virginia. He's gone to school in
23 Virginia.

24 So we've presented some evidence to rebut the
25 presumption; however, that presumption is still there. It is

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1 still something to weigh; however, the government must prove by
2 clear and convincing evidence that there are no conditions.
3 And they have argued quite emotionally that things in the past
4 have been bad with the parents and Mr. Strauss. But
5 Mr. Strauss has never been under court order not to be on
6 electronics. Mr. Strauss has before been under court order not
7 to speak to minors. Mr. Strauss has never been on GPS
8 monitoring, nor had a curfew, nor been in home detention.
9 These are all conditions that would absolutely prevent the
10 concerns that government set.

11 First, not having access to the Internet, you heard
12 from Mr. Strauss that this is no longer, we believe what Evan
13 Strauss is telling us. They're locking the doors that have
14 access to the computer. They are changing from WiFi to
15 ethernet cable so that he can't access WiFi. They are ensuring
16 that he will have no phone, Xbox, or computers. And they're
17 going to make sure that he doesn't go out and get them because
18 not only does he not have a license, but they're going to
19 ensure that if he's under home detention and GPS monitoring,
20 he's not going anywhere. You heard from Mr. Strauss that
21 before -- when the FBI -- and again, he was not under a court
22 order not to get more technology. He was going out with his
23 girlfriend, Faith Thompson. That wouldn't be allowed. There
24 are conditions that would prevent that from happening. There
25 can be conditions that he continue to attend mental health

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1 counseling, which I think everyone, including Mr. Strauss,
2 would agree that he wants and needs.

3 There are conditions that can prevent any alleged
4 danger to the community. And I know Mr. Scheff mentioned risk
5 of flight. This is not a risk of flight case. He has nowhere
6 to go. And all of the danger about swatting, about doxing,
7 about sextortion, about the Internet goes away if Mr. Strauss
8 doesn't have access to the Internet.

9 The government claims that some of the history of
10 Mr. Strauss is so bad because he was speaking to someone who
11 has mental health issues and he continued to groom her. But by
12 the same measure, Mr. Strauss has all of those same health
13 issues and autism to boot. This isn't someone who is trying to
14 groom people. Defense would proffer if these occurred the way
15 it came out it occurred, this is someone who doesn't
16 understand -- especially with these women, he is someone who is
17 raised by healthcare workers who bring in strays, who work with
18 DFS, who are foster parents, and he sees people in trouble.
19 Obviously, he can't go across state lines and not talk to
20 parents and pick up a 16 year-old. Obviously that's not
21 allowed. That's obvious to us standing here. But to Evan
22 Strauss with an IQ of 75, who is autistic, who has to take
23 medication not to deescalate into a manic depressive disorder,
24 that may or may not be obvious. A court order would make that
25 very, very obvious, and would prevent any of those concerns.

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1 Your Honor, we're not denying this is a serious
2 offense. Obviously, we wouldn't have been here for hours and
3 hours if it weren't. We're not denying that this is a
4 presumption case. But we don't lock people up for mental
5 health issues and we don't lock people up based on emotion.
6 And the law shows that there has to be clear and convincing
7 evidence that no conditions, none -- or a combination
8 thereof -- can protect society.

9 Clear and convincing evidence, as Your Honor knows,
10 is the second highest burden in the land outside of beyond a
11 reasonable doubt. And the government has presented a very
12 emotional and powerful speech, but they have not proven that
13 the combination of conditions would protect society.
14 Mr. Strauss, with those conditions, can be released on bond,
15 and they can be severe home detention type restrictions. We
16 have rebutted the presumption, but even if we haven't, the
17 government has not proven by clear and convincing evidence that
18 these conditions would not suffice.

19 Thank you.

20 THE COURT: Mr. Scheff?

21 MR. SCHEFF: I've said my piece, Your Honor. I'm
22 good.

23 THE COURT: I want to thank counsel not for time
24 management or providing the Court with how much time this
25 hearing -- it would take in advance, but with your preparation,

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1 your working together earlier today, and the truly excellent
2 advocacy on the part of both parties.

3 In considering the government's request to detain the
4 defendant, I'm guided by several general principles; first,
5 that at all times the defendant is entitled to the presumption
6 of innocence. Nothing I say in my findings should be construed
7 to affect that presumption in any respect.

8 Second, under the Bail Reform Act, pretrial detention
9 is an exceptional step. Under the Act a defendant must be
10 released prior to trial unless a judicial officer finds that no
11 condition or combination of conditions exist which will
12 reasonably assure the appearance of the defendant -- and I'm
13 going to skip that and just go right to danger, because I think
14 that's where we are -- or reasonably assure the safety of any
15 other person or the community. The Act requires the least
16 restrictive conditions be imposed that are necessary to provide
17 this reasonable assurance of safety. If I cannot find any
18 conditions that will reasonably assure the safety of persons in
19 the community, then I'm required by the Act to order that the
20 defendant be held in custody.

21 The government on its motion seeks to detain the
22 defendant under 18 U.S.C. 3142(f)(1)(E), the felony charges
23 against Mr. Strauss involve a minor victim. There is probable
24 cause to believe that Mr. Strauss violated 18 U.S.C. 2251,
25 sexual exploitation of children. If -- because there is

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1 probable cause, the rebuttable presumption arises under
2 3142(e)(3) that no condition or combination of conditions of
3 release will reasonably assure the safety of the community.

4 As Ms. Diehl has pointed out, the presumption is
5 rebuttable, which means it can be overcome by the defendant.
6 This happens in two steps. The first step, the Court must
7 consider whether the defense has met the very low burden of
8 production to rebut that presumption. And to rebut the
9 presumption a defendant must only produce some evidence that he
10 will not endanger the community if released. I find that the
11 defendant has not overcome that presumption; but nonetheless,
12 regardless of whether he has or has not, even if he had, I
13 would move on to the 3142(g) factors, even if the presumption
14 had been rebutted, because the burden of persuasion lies with
15 the government.

16 I find that the defendant has not offered evidence
17 sufficient to rebut the presumption. The third-party custodian
18 simply doesn't do it. In terms of, if I understand the
19 defendant's argument, is that this is -- these are all mental
20 health issues. There is no provision by which we can protect
21 the public from what has been offered in evidence presented in
22 this case.

23 In terms of a third-party custodian -- I'm going to
24 get to this a little bit later, but I'll tell you right at the
25 outset that condition or proposal is wholly unacceptable to

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1 this Court, wholly unacceptable to this Court, that
2 Mr. Strauss's parents and his grandmother could in any -- or
3 his parents -- Mr. Strauss in any way could possibly be an
4 appropriate third-party custodian in this case for this
5 defendant under these circumstances. It devolved the longer
6 Mr. Strauss was on the stand. He is not an appropriate
7 third-party custodian. If there was a neutral -- before he
8 testified in this case, if there was a neutral as to whether or
9 not he could have provided reasonable assurances of the safety
10 of the community, it went in the other direction. The Court is
11 convinced that, in fact, he would additionally -- the best word
12 and the nicest word I can come up with is enable. But that is
13 not a proposal that would in any way provide reasonable
14 assurances to this Court to protect the safety of other persons
15 in the community from the conduct and behavior of Evan Strauss.

16 Additionally, no access to the Internet, that doesn't
17 solve the problem. Mr. Strauss doesn't even want to know what
18 he's been charged with. He doesn't want to understand the
19 underlying factors. He doesn't want to understand how it
20 happened. He doesn't want to understand anything about the
21 victims or anything about why we're here. And if he doesn't
22 understand why we're here and what the allegations are, how in
23 the world can he possibly protect for this kind of conduct
24 occurring in the future on the Internet? Simply changing from
25 WiFi to an ethernet is not going to resolve the problem. They

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1 have enabled this behavior.

2 Additional devices, while there was no court order
3 requiring that he not access any additional devices, Dad knew
4 he shouldn't have additional devices. Son knew he shouldn't
5 have had additional devices, but he got them anyway without
6 them knowing. And he wasn't real happy when they were taken
7 away. There are devices in the house. There are adults in the
8 house. There's a girlfriend in the house. There's a
9 grandmother in the house. There are adults in the house. And
10 this Court can find no electronic device condition that's been
11 provided in any form or fashion, or certainly that's been
12 presented today, that would in any way provide protection to
13 other persons or the public, given the facts that have been
14 well articulated in this very long hearing in terms of his
15 conduct online. So to those -- to that evidence that I
16 believe -- and arguments that were made on behalf of defendant,
17 it does not rebut the presumption.

18 Now I'm going to switch to my 3142(g) factors.
19 Obviously, the nature and circumstances of the offense, I think
20 everyone in this room recognizes, as does counsel for the
21 defendant, that the charges are incredibly serious and the
22 weight of the evidence is strong.

23 I'm going to move on to the history and
24 characteristics of Mr. Evan Strauss. Again, flesh on the bones
25 in this hearing only made things worse. To simply characterize

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1 his behavior over the past few years as potentially simply
2 being a mental health issue first of all is not warranted by
3 the evidence that was presented to this Court as to a rationale
4 for his behavior over the period of time that we are looking at
5 in terms of his conduct. There have been numerous situations,
6 not just Victim 1, but obviously other young girls -- this
7 young woman from Florida, young woman -- the conduct and the
8 dangerousness that has been described in terms of his history
9 and characteristics is just extremely troubling. While he may
10 have been on meds for two months, he's been engaging in this
11 behavior for years. He has a history of violence against the
12 people that would purport to be his third-party custodians. He
13 has threatened violence and other injuries to victims and
14 others. And the government has well established that he truly
15 cannot tell the truth. He has lied to law enforcement. He has
16 lied to his father and to his mother, and they continue to
17 believe him.

18 Additionally, the nature and seriousness of the
19 danger, they're all interwoven. The Court cannot articulate
20 the danger that Mr. Strauss poses to other young girls. He
21 poses physical and other danger to the people in his home, and
22 he poses significant danger to young girls and to other victims
23 and to those who disagree with or challenge him in any respect.

24 Again, third party, when I look at conditions as to
25 whether or not there are any conditions that could reasonably

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1 assure the safety of the community, again, the Court has
2 already addressed the lack of access to computer devices. The
3 Court simply does not see any possible workable solution or
4 condition by which the Court can reasonably assure safety in
5 terms of online presence. Location monitoring is going to do
6 nothing. He engaged online with numerous victims. So whether
7 that's in what part of the house or another, on what device,
8 and given his computer and other talents, that provides the
9 Court zero assurances that the other persons in the community
10 would be reasonably safe with that condition.

11 I'll get back to the third-party custodian. As I
12 said before, it's stunning to me that Mr. Strauss could testify
13 that after this North Carolina incident when he discovered that
14 his son had lied to him, it's stunning that he went to North
15 Carolina. It's stunning that he brought a girl back from North
16 Carolina. It's stunning that he did not confirm her age as the
17 adult who had to drive Evan down there. It's stunning that he
18 provided no confirmation of it, but when he did discover that
19 she was 16, he's the adult that drove down there and got her.
20 While his son may also be an adult, he put it on his son to
21 call law enforcement. He's a nurse. His wife works with the
22 Department of Social Services, and they should understand their
23 obligations in this respect, and he didn't do it. And then
24 after that incident, a 16 year-old girl from South Carolina
25 comes to stay in their home for weeks. The Court finds that

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1 stunning, absolutely stunning. And not for one second does
2 this Court believe that placement of Mr. Strauss in this home
3 where his behavior has been enabled for years with his parents
4 looking the other way out of love or ignorance or whatever,
5 there is zero excuse. And I do not find that his father -- or
6 no one else has come forward -- is an appropriate third-party
7 custodian. I think I've beat this horse.

8 I hope the Court has well articulated its reasons.
9 The Court finds that there is no condition or combination of
10 conditions under the Bail Reform Act that could reasonably
11 assure the safety of other persons or the community. And for
12 that reason, the Court is left with the only option that
13 Mr. Strauss be detained pending trial.

14 Is there anything else from the government?

15 MR. SCHEFF: There is not, Your Honor. I do
16 apologize for our lack of communication with regard to
17 scheduling.

18 THE COURT: It's okay. Now you know that I'm going
19 to do what we need to do, but we'll do better. We'll do
20 better. But Mr. Strauss deserved every moment of this hearing
21 and the opportunity for every witness to be heard, and for his
22 attorney to have every argument made. And I hope that you all
23 understand that that's been done today.

24 MS. DIEHL: Yes.

25 THE COURT: And I'm not barking at anybody about that

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1 part. And I would have stayed here until 10:00 tonight, if we
2 needed to. It's very, very important to him, and I understand
3 that. And I hope he realizes that the Court has considered the
4 evidence that it has heard and been presented here today.

5 Ms. Diehl, is there anything else on behalf of the
6 defendant?

7 MS. DIEHL: Nothing else, Your Honor. I will
8 certainly overestimate time in the future.

9 THE COURT: It's all right. It's all right. I want
10 to thank everyone -- all of the folks that were necessary to
11 participate in this hearing to be here today.

12 And Mr. Strauss, I do wish you good luck.

13 THE DEFENDANT: Thank you.

14 (Proceedings adjourned, 7:28 p.m.)
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C E R T I F I C A T E

I, Lisa M. Blair, RMR/CRR, Official Court Reporter for the United States District Court for the Western District of Virginia, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a correct transcript of the proceedings reported by me using the stenotype reporting method in conjunction with computer-aided transcription, and that same is a true and correct transcript to the best of my ability and understanding.

I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

/s/ Lisa M. Blair

Date: April 22, 2024